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RACIAL EQUALITY AND THE LAW

The Role of Law in the Reduction of Discrimination in the United States

by Morroe Berger

MADRAS INSTITUTE OF DEVELOPMENT ...
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PREFACE

This study of laws introduced in the United States of America with a view to reducing racial discrimination was undertaken in pursuance of resolution 3.22, adopted by Unesco's General Conference in 1951, under which the Director-General is authorized: 'To undertake, in collaboration with Member States concerned, a critical inventory of the methods and techniques employed for facilitating the social integration of groups which do not participate fully in the life of the national community by reason of their ethnical or cultural characteristics or their recent arrival in the country.' [1]

The purpose of the inquiries authorized by this resolution was to assemble a body of facts from which the United Nations, the Specialized Agencies, and others engaged in combating all forms of discrimination, might derive useful information which would help them in their efforts to eliminate this source of friction and conflict.

The studies undertaken by Unesco bear on six countries, each of which has endeavoured, by means of its own particular methods, either to help forward the integration of minority groups or to enable them to develop freely whilst preserving their own traditional culture.

The part that the Law should play in preventing members of certain groups from being unjustly treated, on account of their racial or cultural affinities, has been the subject of much discussion. Social scientists are by no means unanimously in favour of introducing legislation which runs counter to the prejudice and preconceived ideas of a society. Some of them think that the Law is effective only when based upon general feeling in the country. Others hold that a law aimed at eliminating injustices, even when the latter are tolerated by a large section of the public, helps—by the mere fact of declaring illegal the actions to which they give rise—to convince the waverers and ends by undermining prejudices. The problem is thus an important one and should be considered from the factual point of view.

In this respect, the United States of America has become a testing ground. For some years past, several states have passed laws designed to make private employment accessible to members of racial minorities, hitherto debarred by prejudice. The social experiment reflected in these measures has now been in progress long enough for the results of such legislation to be assessed. It is also sufficiently diversified to enable a study to be made of the different factors militating in favour of the acceptance of those laws.

[1] Sixth Session, Paris, 1951.

The question has often been considered by American sociologists: we wished to make the results of their research known to an international public. We therefore applied to the American Jewish Committee, which has been conducting surveys on racial relations in the United States of America for many years, and is in a position to secure the collaboration of eminent specialists. The task of writing a general report on this problem was entrusted to Professor Morroe Berger, of Princeton University. We should like to take this opportunity of expressing our gratitude to him, as well as to the American Jewish Committee, for their valuable contribution to our work.

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MADRAS INSTITUTE OF DEVELOPMENT STUDIES
(M. I. D. S.)
74, Second Main Road, Gandhinagar
MADRAS India

INTRODUCTION

Among the most noteworthy and heartening events in the United States during recent years has been the steady and at times rapid improvement in the relations between the numerous groups of its population. There has, all things considered, been a truly remarkable improvement in the welfare, status and rights of minority groups of every origin, religion and colour. In connexion with the changes, the world seems to hear (and certainly to speak) more of the evils than of their amelioration, forgetting the uniqueness, complexity and difficulty of the problems created by the heterogeneous nature of the American population. And, just as naturally, Americans have preferred to stress the difficulties and achievements. There is, then, some necessity for an objective and detailed review of developments in the field of group relations in the United States. But since the subject is so vast, this discussion is limited to a survey of only one sector of it, the crucial one of discrimination in employment, concentrating chiefly upon the approach to the problem through legislative and legal rather than social or educational techniques.

In making this report available, it is hoped that two purposes will be served. First, that the true facts about the American experience, which tends often to be misunderstood and misinterpreted by citizens of other nations, will be communicated to the interested layman as well as the specialist. It is also hoped that those who deal with similar problems in other nations may find useful an examination of conditions in the United States and of what has been accomplished in the reduction of discrimination through the relatively untried method of legislative and other legal procedures.

I am indebted to the American Jewish Committee, which asked me to carry out this assignment it undertook from Unesco. I want to thank several members of the committee's staff, Herbert Poster, Sidney Liskofsky, Theodore Leskes, Marc Vosk, and Lawrence Bloomgarden, for many helpful suggestions.

GROUP RELATIONS IN THE UNITED STATES

It is something of a paradox that the world has long pointed to the United States as a classic example of both political democracy and social inequality. Indeed, as political freedom has diminished in large areas of the globe and colour discrimination arouses even more bitter resentment with the decline of colonialism, the United States has become the object of much critical examination. While observers most concerned with political freedom, and economic and technological advances have been favourable in their comments on United States institutions, observers more concerned with group relations and the problems of social equality have often been highly critical. What both groups have tended to overlook is that in recent years the United States has applied the identical machinery that operates its political democracy to effect considerable improvement in its traditional pattern of social discrimination.

Indeed, it already seems safe to say that in the 'contest' between the implications of political democracy in the United States and the implications of its system of unequal social status based in part on custom and in part on law, the former are prevailing over the latter. The issue is certainly not fully settled. Yet, unless there is a sudden and sharp reversal, all present trends show the 'contest' resulting in a clear-cut, if not uniform, victory for the principles of democracy over those of inequality. Such a victory will serve also to demonstrate that legislative and legal techniques can effectively reduce and even eradicate deeply rooted prejudices and habits.

While discrimination in any form is itself undemocratic (although there are theorists and groups who have held that the milder forms of it are wholly compatible with democracy where everyone has the right to express his tastes) its most injurious aspect is economic. Before equality of status and other minority rights can be assured, it is above all essential to remove the barriers to earning a living and other impediments which block anyone from attaining the more desirable professions and vocations. But in order to study economic discrimination in the United States and what has been done legally to eliminate it, it is necessary to see this phenomenon in its broad social context, to know something of the pattern and history of discrimination, to understand the structure of the American polity, the divisions of function between the federal and state governments, the power of the courts, the activities of the various federal agencies, and the influence of the large and multifarious private organizations, trade unions, voters' groups, ethnic organizations, business

and professional associations. And even before taking up these matters, it is necessary to arrive at a more precise notion of what is meant by 'discrimination' and to obtain a picture of current trends in group relations in the United States.

In developing relations with other people, all of us are constantly making choices on the basis of more or less conscious deliberation. We select this person over that one as a friend; we adopt attitudes towards others ranging from love to hostility; we choose to be intimate with this acquaintance and prefer to remain more formal with that one. In one sense this process might be called discrimination, since by it we select one among several courses of action and exclude others. But so long as this selection is based upon consideration of the individual qualities of other persons, we do not call it 'discrimination' in the sense in which this word is used in the analysis of group relations.

Consider now another sort of selection. Suppose a man to select his friends, or the neighbourhood in which he will live, or the school his children will attend, in such a way as to bring him and his family into as little contact as possible with individuals of a certain religion, nationality, social class, or skin-colour. Suppose further that he arrives at these decisions not by evaluating the merits or demerits of members of these groups but simply on the basis of his dislike or fear of those groups as such; or, as is frequently the case, on the basis of his belief that *all* the members of a particular group are inferior to him or unworthy of his association. Such a person can be referred to as prejudiced. He groups and evaluates people on the basis of traits which have no validity, according to the scientific data we now have, as an index to individual intelligence, taste, capacity to learn, or to such qualities as honesty, trust-worthiness, ambition, and so on. Nevertheless, the actions of a person who makes such prejudiced judgments is not discrimination in the sense in which the word is used here, although it usually leads to it.

Discrimination, in this sense, is not simply an attitude or an opinion, although it may be (and usually is) based upon either or both. Discrimination, rather, is a specific act, a deliberate attempt to exclude some individuals from something desirable because they are presumed (correctly or incorrectly) to belong to a certain group. The groups that are most often the objects of discrimination are identified by means of religion, national origin, colour, language, and social class. Discrimination on such grounds means the denial of a right or privilege to a person on the ground of his presumptive membership in some group, regardless of his individual qualities. We may accept the following brief definition given by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities:

. . . discrimination includes any conduct based on a distinction made on grounds of natural or social categories, which have no relation either to individual capacities or merits, or to the concrete behaviour of the individual person.'[1]

Discrimination, then, is an overt act usually, although not necessarily, derived from an attitude of prejudice. We say 'not necessarily' because we know that many persons who discriminate do so not out of their own prejudice but out of a tendency to conform to a discriminatory pattern they find in their communities or at their place of work. Since it is an act rather than a feeling, discrimination is more easily combated than prejudice, is more amenable to control by law, and is more easily measured by the student of social relations. Likewise, its growth or decline is more easily studied and measured than is the decrease or increase of prejudice.

Among the most recent efforts to determine quantitatively the amount of discrimination in various areas of American society is a study by Ralph H. Turner of employment discrimination against non-White (mostly Negro) Americans.[2] Mr. Turner, by measuring the differences in occupational distribution of Whites and non-Whites having the same degree of formal education, has reached some noteworthy conclusions, among them, the following:

1. Nearly two-fifths of the difference in occupational distribution between Whites and non-Whites is due to the fact that Whites have more formal education. But the remaining three-fifths cannot be traced to educational superiority and may therefore be attributed to discrimination.
2. Unemployment strikes non-Whites more heavily than it does Whites. Only about one-fourth of this difference can be attributed to the lower educational level of the non-Whites. The remainder may be said to be due to discrimination.
3. Discrimination against non-Whites does not occur primarily in the form of a complete refusal to hire them but in the refusal to hire them in those capacities for which their formal education qualifies them.

The assumption that education is the chief determinant of employment qualification also points to another significant form of discrimination, inequality of educational opportunity. In a society where training is so important, practices of this type are simply an early form of occupational discrimination. The groups that suffer most in this respect are the Negroes, who find

[1] UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities. *The Main Types and Causes of Discrimination.* Lake Success, N.Y., 1949 (E/CN.4/Sub. 2/40/Rev. 7 June 1949), par. 33.

[2] Ralph H. Turner. 'Foci of Discrimination in the Employment of Nonwhites', *American Journal of Sociology.* Vol. 58, No. 3, November 1952, pp. 247-56.

that their access to higher education is severely limited, and the Jews, who are not freely admitted to some privately supported colleges and professional, especially medical, schools. It would be futile to deny that these conditions in education and employment do exist in the United States. But it would be equally futile, after considering the changes that have recently occurred and comparing past and present conditions, to deny that noteworthy advances have been made in eliminating these evils.

It is highly significant that most of the recent advances have been closely connected with the policies and acts of the federal and state governments. During the great depression of the 1930's, the United States underwent a profound, far-reaching and probably lasting change in its conception of the proper role of government. New interpretations of the United States Constitution greatly enlarged the power of the federal government at the expense of the states, particularly in the regulation of economic affairs. At the same time, the state governments found their own power to regulate their internal social and economic relationships strengthened and increased. Decisions of the United States Supreme Court acknowledged and confirmed that government had the power to regulate, in some respects, the hiring and firing of workers and to prescribe working conditions. And it was this change in the broad philosophy of government that set the stage in America for the newest and most effective methods of coping with discrimination.

It was in response to the depression, too, that the federal government instituted programmes that eventually affected group relations in every community in the country. Many of these programmes were designed to aid the indigent and inevitably reached those groups that had suffered most from discrimination. Although the anti-depression measures were not aimed specifically at these 'underprivileged' groups, the government definitely sought to carry them out without regard to the colour, religion or origin of the beneficiaries. Money was distributed directly to the poor; plans were developed for aiding farm owners, tenants and workers; the government built houses or contracted for them to be built; through a vast public works programme hundreds of thousands of men and women were hired for every kind of work from menial labour to the most advanced kind of artistic creation. In all this variegated activity, minority groups of every kind received fairer treatment on a national scale than they had ever enjoyed before.

The Negroes, in particular, experienced a much greater measure of equal opportunity and treatment than they had enjoyed in the past. Of course, equality in the distribution of charity or govern-

ment relief funds is not precisely the answer to the aspirations of underprivileged groups. But the full acceptance of their rights was an indication of the new spirit in the land and an augury of more significant gains. Taken in conjunction with vast changes in the distribution of the Negro population, federal recognition of their status helped to set in motion forces tending to make for their greater participation in the benefits of democracy.

A considerable migration of Negroes from South to North had begun during World War I. This trend continued during the post-war period, increased during the thirties, and, owing to a variety of factors, was sharply accelerated during the war-interrupted decade of 1940-50. The suddenness and size of the change may be measured by the fact that during this last-mentioned decade the total population of 16 southern states nearly doubled, whereas their Negro population increased by only 2.5 per cent. Another aspect of the changing role of the Negro in American life was his growing urbanization. In 1940, 27 cities contained 17.5 per cent of the total Negro population; 10 years later the same cities contained more than 30 per cent of the total. The hectic pace of Negro urbanization can be measured by the simple fact that whereas from 1940 to 1950 the white urban population rose from 58 to 64 per cent of the total, the Negro urban population expanded at more than twice the White rate, rising from 48 to 61 per cent.

Along with increased educational and employment opportunities, an important consequence of these population trends is that Negroes are more concentrated than before in northern cities and states where they are free to vote and to utilize their strength at the polls. These cities and states, moreover, owing to their large populations, are influential in national elections. One indication of the potential power of the free Negro vote is that in 1948 and 1952 this vote was greater in many states than the margin of victory of either of the two major political parties, Republican and Democratic. Negro voting has likewise grown rapidly. In 1948 it was estimated that there was a record Negro vote of 750,000; in the 1952 national election this vote was put at 1,350,000. These gains were registered not only in the North but also in the South, where the trend toward Negro disfranchisement has been decisively reversed and Negroes are becoming an important influence in elections.

Meanwhile, during this period of the 1930's and into the next two decades as well, the United States Supreme Court was both responding to this new spirit and stimulating its growth. In a series of remarkable decisions, the Court reversed a tradition of a half-century and began to give special protection to the rights of minority groups—protection redounding especially to the

benefit of Negroes, the most under-privileged among these groups that have suffered from systematic discrimination.

During the decade following the end of the Civil War, the federal government had sought, through five major laws and three constitutional amendments, to protect the newly-emancipated Negroes in their exercise of the rights and privileges of United States citizens; but in the period that followed, the Supreme Court by its verdicts in case after case restricted the application of these statutes and amendments. During the 1930's, however, the decisions of the Court began to emphasize the protection of civil rights. As we shall see later in more detail, the Court gave the federal and state governments greater power in protecting minority groups against discrimination by private individuals and groups, and at the same time diminished the power of governments themselves to discriminate. These decisions bolstered minority rights in the administration of justice, citizenship, employment, and voting, and helped considerably to weaken segregation in education, housing, and public transportation facilities.

In the thirties, too, a period began during which the legislative branches of both the federal and state governments were continuously influenced by the trend towards equality of opportunity. True, up to the end of 1953, the United States Congress had been unable to overcome the tenacious opposition to major civil rights legislation. But even this body, which reflects all the interests of every geographical region, including the South, where discrimination and segregation are strongest, has felt the powerful impact of the new spirit. Although it has actually passed none but minor laws, Congress has served as the arena for many long-drawn, widely publicized battles for measures against discrimination. These struggles have done much to educate and arouse the public and to unite all the organized groups seeking corrective legislation. The number of bills introduced is itself impressive. In 1937-38 there were only 10 bills dealing with minority problems; during the next 10 years 170 such bills were presented and in 1949-50 alone 72 bills were introduced.

The state legislatures have also experienced this growth of interest in the outlawing of discriminatory practices, and many of them have enacted effective laws. From the establishment of the United States until 1953 the states have enacted almost 400 anti-discrimination and anti-bias laws. Two-fifths of these laws have been passed since 1940.[1] These statutes have outlawed discrimination or segregation in employment, places of public

These statutes are summarized in *Check List of State Anti-Discrimination and Anti-Bias Laws*, Commission on Law and Social Action, American Jewish Congress, N.Y., 1953.

accommodation, education, health care, housing, insurance and loans, the armed forces, voting, the professions, or have sought to remove irregularities in marriage laws, or have dealt with group defamation, the rights and status of aliens and the foreign born, and mob violence.

Underlying these government activities has been an extraordinary upsurge of popular feeling for democratic equality as revealed in the activities of a host of private voluntary organizations, including business and religious groups, athletic organizations, professional groups, etc. Only a few years ago discrimination became for the first time a subject treated openly, frankly and extensively in the movies, over the radio, and in the mass circulation magazines. Dozens of cities, in response to demands by their citizens, established special agencies to improve group relations. The major leagues in professional baseball began in 1947 to hire Negro players, and by now they are so well accepted as to occasion little comment. Since the 1940's, too, religious, labour and professional groups have admitted to membership all qualified persons irrespective of race, colour, religion, or national origin; these include national Church groups and local Churches of all religions and denominations, trade unions, and associations of doctors, dentists, nurses, lawyers, teachers, scholars, and students in all parts of the country, including the South.

The upshot of all this government and private activity is that the Negroes, who have constituted by far the most underprivileged large group in the United States, have made great strides towards achieving living conditions on a par with other United States groups. These advances can be measured in certain indices of welfare as reported recently in a special study by the United States Bureau of Labor Statistics. Two conclusions are drawn from the facts presented in this official study: 'The first is that in almost every significant economic and social characteristic that we can measure—including length of life, education, employment, and income—our Negro citizens, as a whole, are less well off than our White citizens. The second is that in almost every characteristic the differences between the two groups have narrowed in recent years.'

In terms of basic health, while the death rate is still higher among Negroes than Whites, the difference in these rates has declined markedly. In 1935, the Negro death rate was 17.3 per 1,000 of the population, the White rate 11.1 per 1,000. By 1949, the death rate among Negroes had declined to 12.6 as the White rate dropped to 8.4, the Negro decline being proportionately greater. In education, likewise, the statistics for the same period revealed that the gap between Whites and Negroes had been

considerably reduced. In 1940, Negroes at the age of 25 had completed an average of 5.7 years of school; in 1950 this figure had risen to 7 years. In 1940, Whites had completed 8.7 years of school, and, in 1950, 9.7 years. The Negroes' gain was thus proportionately higher than that of the Whites.

Progress in employment can be measured by the degree to which Negro workers have been able to leave ill-paid jobs in agriculture for skilled or unskilled jobs in industry. In 1940 more than 40 per cent of all Negro workers were in agriculture; by 1952 this number had declined to 19 per cent. This decrease in the proportion of Negroes in agriculture was more than twice the decline among the Whites. The total improvement in the economic condition of the Negro may be gauged from the fact that in 1939 the average Negro worker's income was about $400 a year—or less than 40 per cent of the average wage of White workers. In 1950, the Negro worker earned an average of $1,300 a year—or 52 per cent of the White worker's average wage.

Although these changes, during a relatively short period, are evidence of significant progress, no one would deny that much remains to be done to improve group relations in the United States and to ensure the rights and privileges of all the inhabitants. The advances have taken place under favourable economic conditions, they have not been uniform and, in scattered urban areas both in the North and South, they have been accompanied by some illegal violence. Nevertheless the progress is perceptible and so is the will and determination of the majority of the American people to move forward towards the realization of full equality of rights and opportunity for all. And as the United States has become increasingly subjected to world scrutiny, the government and American citizens have realized that the United States minority problem is one which, for good or ill, can seriously affect American status abroad.

EMPLOYMENT DISCRIMINATION AND ITS REDUCTION

Employment discrimination as it exists in the United States persists as the result of a situation involving contradictory elements. On the one hand, such discrimination can only become a serious problem in a society that is highly industrialized, that is, a society in which workers are employed in large-scale, mechanized enterprises under what is known as a capitalist or entrepreneurial system of production. Such a system is considered highly 'rational', since it tends to encourage science and technology and gears itself to making profits through the most efficient processes of production and distribution. On the other hand, discrimination could not exist without such irrational factors as prejudice, bigotry, anxiety, etc., all of which introduce into the process of production judgments based on race, colour, religion, or national origin that function, demonstrably, to militate against maximum efficiency.

Discrimination depends, therefore, upon the coexistence of two developments, each typical of radically different patterns of life. To begin with, there must be a high proportion of wage-workers in the employ of owners or managers and a high degree of occupational specialization yielding different rewards from small to relatively large for those working at different tasks. But alongside these modern, capitalistic economic modes persist older patterns of thought and behaviour, which do not have efficiency as their sole criterion and allow the operation of prejudice, irrationality and sentiment to influence the process of production.

As the American sociologist, Everett C. Hughes, has pointed out, modern industry mixes various kinds of peoples, brings various groups together in a pot-pourri of nations and classes within nations.[1] While it brings people together on a large scale, industry also segregates individuals and groups according to their function and status. This kind of segregation is very apt to develop along ethnic or racial lines. Thus, in almost every country, whether economically developed or underdeveloped, certain groups concentrate in particular crafts or industries. When this sorting process is unrelated to actual qualifications and when members of particular groups are excluded against their wish from desirable employments, a discriminatory pattern may be said to exist.

Occupational discrimination is not confined solely to the United States. It plagues other countries too, but does not usually cause so much domestic agitation or so much comment from

[1] *Where Peoples Meet.* Glencoe, Ill., The Free Press, 1952, Chap. 5.

foreign observers. The reasons for the intensity of feeling generated by the presence of discrimination in the United States are numerous, rooted in its history of mass immigration and the development of its democratic, highly industrialized society.

To begin with, successive waves of new immigrants into a land where no political compulsions exist have created a nation where minorities of one kind or another formed, in the year 1950, fully one-third of the population of some 150 million. In that year the United States contained more than 28 million Roman Catholics, over 15 million Negroes and more than 5 million Jews. Persons of Asian and Latin American birth or ancestry numbered more than another million. And though the rate of immigration has been comparatively low for a generation, there were still 10 million people in the United States who were born outside its boundaries. The difficulties of reconciling opposing interests, beliefs and habits in so heterogeneous a society are readily apparent.

American minority groups have, moreover, a very different relation to society from similar groups in European countries. In Europe, for the most part, discrimination is—or at least was—the product of a legally-imposed pattern involving restriction of the opportunities of genuine 'minorities', that is, groups in a national state which did not wish to become part of the community but wanted certain rights guaranteed to enable them to *withdraw* from the rest of the community. A 'minority' in the United States today is something else—it does not denote a group constituting an enclave seeking to isolate itself from national life as a whole. By and large, United States minorities desire and strive towards full participation in the life of the community. The result is a great emphasis on factors such as prejudice and discrimination that frustrate the powerful urge towards full integration.

Moreover, it is precisely because the United States makes it possible for all individuals to share in the country's great wealth that such resentment is created among those who suffer from unequal treatment. In other countries the problem is apt to be less acute because there is less wealth, the approaches to it fewer and the class-structure too rigid to permit much movement. The greater social mobility of the United States, coupled with its philosophy of ambition and ability to reward successful achievement, means that any block in the aspirations of a group has the most serious social and political consequences. Finally, the ideals and traditions of American democracy, the highly industrialized economy which militates against all irrational prejudices that interfere with productivity, tend to make the existence of inequalities a serious matter, disturbing the security and way of life of the nation as a whole.

Discrimination, in America, takes many forms and excludes individuals from various desirable offices and activities for a host of different reasons. Thus, it is extremely improbable at present that anyone but a white Protestant would be elected President, but this is not yet considered a serious grievance to those so barred. Indeed, it is common for groups to be disturbed very little by certain kinds of barriers, while those who erect them feel most strongly about their maintenance. In his monumental work, *An American Dilemma; the Negro Problem and Modern Democracy*, Gunnar Myrdal, the great Swedish economist, has pointed out that a curious hierarchy of discrimination against the Negro prevails in America. Those who discriminate feel most strongly about items regarding which the Negroes themselves have only a minimum of concern. Here is the list, going from the items which arouse the highest intensity of emotion in those who discriminate to the lowest:

1. Intermarriage, and sexual relations involving white women.
2. Other personal relations, e.g., eating, dancing, bathing and general social intercourse.
3. Use of public facilities, e.g., schools, churches, means of transportation.
4. Political rights, e.g., the right to vote.
5. Discrimination in courts of law and by police and other officials.
6. Economic activities, e.g., land ownership, employment, obtaining credit, public charity.

The intensity of the Negro's feelings about these items is diametrically opposed to those of the white man; he feels, for the most part, much less disturbed by the items at the top of the list than he does by those at the bottom. The chief reason for this is his relatively low economic status. This accounts for the large proportion of his hopes, energy and resources that the Negro has put into the struggle for fair employment practice legislation. A correspondingly strong reaction from those opposed to this kind of legislation and the involvement of other minority groups have combined to make the issue of fair employment a crucial one in the campaign for equality in the United States.

However, for other groups—Catholics, Jews and people of foreign ancestry, for example—employment discrimination is less of a problem than it is for the Negro, as they are much closer to full equality. In another sense, however, occupation discrimination is more keenly resented by these groups because it represents almost their sole major grievance, while the Negroes suffer from other forms of discrimination as well. The social discrimination from which the other minorities may suffer, however much it may affect some individuals, is not of such intensity nor does it

cause such resentment that the group as a whole feels strongly compelled to take serious action against it. It is moreover well-nigh impossible to redress all private wrongs by law.

It is apparent then that discrimination is a complex phenomenon requiring a complex solution. Forces at work to end discrimination for one group in one part of the country are often neutralized by different forces at work for a different group or in a different area. The mere geographic distribution of the affected groups is testimony to this fact. Most of the 25 million Catholics are concentrated in the north-eastern part of the country; about 60 per cent of the 15 million Negroes still live in the southern states (although this proportion is declining rapidly); about half the Jews live in New York City. People of Mexican origin and descent are concentrated in the South-west; Puerto Ricans are to be found chiefly in New York and other parts of the East while the Orientals live mainly in California and other West Coast areas. The Catholics, Jews, Chinese, Puerto Ricans and northern Negroes inhabit mostly urban areas, the southern Negroes live in rural sections, while the Japanese, Mexicans and Filipinos are about evenly divided between the rural and the urban.

This variegated checkerboard of colours, religions and ethnic origins is not merely the result of recent developments; the United States has been heterogeneous from its earliest colonial days. The first white settlers were, themselves, religious minorities, dissenters from the dominant religions in their European home countries. Friction between ethnic groups was manifested early, among the various groups of white settlers themselves, as well as in their relations to the Indians they were displacing and to the Negro slaves they were importing from Africa. Meanwhile, immigration from Europe continued and increased. Until about the middle of the nineteenth century, most of the newcomers were of English, Scottish, German and Dutch origin. Since they were not too dissimilar in appearance, culture and origin, their differences were composed without much difficulty. But in the 1840's a new element, the Irish Catholics, arrived, provoking considerable religious and ethnic discrimination, especially as their numbers grew. From about 1880 onwards, during the great period of United States industrial expansion, a huge influx of immigration from Southern and Eastern Europe brought to the New World millions of people who differed markedly from the earlier settlers in religion, appearance and ways of life. They were mostly Roman Catholic, Jewish or Greek Orthodox in religion, and came from Russia, Italy, Poland and other countries close to those, geographically and culturally. Fom the Orient, too, in the middle of the nineteenth century came a large group of Chinese who worked on the growing railroads, in the mines and on the

farms of the West, causing resentment among labourers who often found themselves displaced because of the willingness of the Chinese to work for much lower wages.

A considerable number of Japanese arrived in 1900 and found employment, for the most part, on West Coast farms. In 1920, Filipinos arrived in substantial numbers. Mexicans arrived in small numbers before World War I and have been entering in larger numbers since. Masses of Puerto Ricans came to the United States, mainly to New York City, after having been granted United States citizenship in 1917; in recent years, still larger numbers of the islanders have migrated to New York City. A certain amount of local strife, agitation and discrimination has attended the arrival of nearly all these foreign-born groups. Most of them found employment in occupations they had practised in their home countries, or similar work. By and large they were, at first, confined to the jobs that appeared less desirable in an expanding economy. But as time went by the majority of the immigrants and their children found the road to occupational and educational advancement relatively open.

This cannot however be said to be true of the Negroes, whose history in this country is unique and unlike that of any other group. Before the Civil War Negro slaves performed the labour of the agricultural South. After the abolition of slavery they continued to work on southern farms as tenants and then as free workers. In the urban areas of the South they were employed as domestic servants and unskilled labourers in mining, the iron and steel industries and tobacco-processing. During the slavery period, also, a substantial number of free Negroes in the South were employed as skilled workers, mostly in the construction industry. In the period immediately following the Civil War, when Negroes were excluded from many kinds of life and work in the South, they lost their hold on skilled construction jobs. The introduction of new methods in the industry caused the skill of the unemployed quickly to become obsolete. Discrimination by employers and the exclusionist policy of trade unions prevented the southern Negro from realizing the promises of emancipation. In the North, at the same time, there were relatively few Negroes, and most of them worked as servants, janitors, porters and labourers. Between 1890 and World War I, a great wave of labour troubles offered the Negroes the opportunity to get jobs in some heavy industries as strike-breakers. The labour shortage of World War I opened up employment to them in iron, steel, meat packing, and the automobile industry. Such, in brief, up to the last two decades of sweeping changes in American society, has been the economic and industrial history of the American Negro.

As can be seen, discrimination in the United States is not a

simple, uniform phenomenon. Nor is it possible to obtain absolute agreement on the best means for ending it, even among those most deeply concerned with the problem. This report, it must be repeated, is primarily interested in the use of legal means to end discrimination in employment. This does not mean that all concerned believe it the best means for the purpose nor that other methods and agencies have not been tried with considerable success. Thus, to cite only one of scores of organizations, the National Urban League with Negro and white members and branches in cities everywhere in the United States, has done remarkable work in securing for Negroes positions for which they are qualified by education and training. Since the League relies solely on the good will of employers, its accomplishment is testimony to the fact that the strict compulsions of law are not the only means to effect reduction of discrimination. The number of the civic and educational associations, trade unions and organizations of groups subject to discrimination that have waged vigorous campaigns against prejudice is legion. While the results of their efforts are not precisely measurable, it cannot be denied that they have at least helped to create a climate of opinion wholly favourable to equality of opportunity.

Apart from the work of voluntary organizations and the effect of legal compulsion, the picture of discrimination is constantly being changed and shaken by great social forces—war, strikes, prosperity, depressions, and population changes. The very dynamics of American democracy tend to foster a real equality in order to eliminate internal contradictions. Strikes and labour unrest often open up avenues that were formerly closed to minority groups. A shortage in any given profession, or an overall labour shortage—as during World War II—often allows new groups into occupations, industries and jobs from which they were formerly excluded. For well over a decade now the United States has been in a period of 'full employment' with concomitant benefits and advantages to everyone in a position to put labour power of any kind on the market.

The successful workings of law and legal techniques utilize, and to some degree require, these other factors. The climate of opinion created by private initiative, the needs created by inexorable social and economic trends, are often simply expressed by the enactment of a statute or administrative order. The law in this case tends to accelerate and regulate a change which would come about in any case but in a slower, more haphazard fashion. Where a law is arbitrary, unsuited to the conditions of the period and prevailing opinion, observance is apt to be difficult to obtain in any case. The prohibition of the manufacture and sale of alcoholic beverages is perhaps the most famous example in the

history of the United States of what happens when an attempt is made to compel behaviour that runs counter to the will of a majority of people. Law, to the degree that it actually changes people's lives, is not simply a measure passed by a legislature and backed up by force or the threat of force. Most laws require very little compulsion to secure compliance and envisage the use of force only as a last resort. Moreover, law in the United States is of several varieties: the statutes passed by federal, state and local legislatures, and law in the sense of administrative actions and rulings by the government; while, as a result of the common-law system and the written Constitution which is interpreted by the highest court in the land, judicial decisions create law too.

Law in the United States, then, emerges as the end result of a great number of pulls and counter-pulls, as the final resolution of the needs, rights, desires and powers of the private individual, the local community and the central government. The American system of 'checks and balances' has come into being as a result of the desire not to delegate too much to any one branch of government. The Constitution, itself, contains a series of compromises, the most important of which, the distribution of power between the federal and state governments, derives from the desire of the original colonies to retain as much autonomy as possible. Since then the states have lost many powers and functions to the federal government as commerce and industry have changed in character, and as nation-wide corporations, modern communications and transportation have linked the nation together and relegated purely local problems to the background. Nevertheless the states still retain a considerable share of the autonomy they had in 1789 when they ratified the Constitution.

Every citizen of the United States is a citizen not only of the country as a whole but of one of the 48 states. The states have their own judiciary systems; the criminal laws that are most often actually applied are state laws and, in daily life, the American citizen is more likely to come in contact with local than federal authority. The drafters of the Constitution, influenced by the liberal eighteenth-century belief that the great threat to individual liberty was the central government, specifically enumerated and described federal powers but left the rest, undefined, to the states. The resultant federal-state balance has had profound effects upon the rights of minorities and the political freedoms of the individual.

The first 10 amendments to the Constitution constitute the American 'Bill of Rights' which secures the rights of individuals against infringement by the federal government. On the other hand, no power is expressly given to the federal government by the Constitution which would enable it to secure civil liberties and rights against encroachment by private individuals. These

limitations have seriously hampered efforts by the federal government to protect groups whose rights have been jeopardized by state and local governments or by individuals; and while amendments to the Constitution have been passed which enable the national government to protect 'minority rights' against violation by states and municipalities, it is still the state and local authorities which exercise the police power that most intimately affects people in their daily lives.

The institutions of the United States, then, reflecting as they do a delicate balance between the national, state, local and private interests, make the uniform solution of the problem of discrimination by legal methods a difficult matter. It is also true that the attitude of Americans towards law itself has been somewhat ambivalent ever since the days when those who sought freedom from the laws of their original countries arrived to establish their own communities in the wilderness of the New World.

Two sharply opposed traditions are at work in the United States to shape individual attitudes towards law and government. There is the tradition of the moving frontier, derived from the period when the boundary of the settled area of American life was constantly moving westward, creating large border areas in which there was only a rudimentary state power. In the rough and tumble atmosphere of new communities in the making, the inhabitants of these areas became accustomed to doing things for themselves, relying upon their own power and initiative instead of the distant authority of a government whose laws and agencies were shaped to the needs of more civilized areas. The resultant attitude of disrespect for unwanted and inconvenient laws and the high estimate of private initiative has survived up to the present—as can be witnessed in the American love of movies about the old Wild West, when men could follow their own rough code of justice without getting tangled up in the red tape and the impersonal complexities of the modern world. This attitude is also reinforced by the widespread, essentially religious notion that there is a 'higher law', the law of God, which, in cases of conflict, takes precedence over the merely man-made laws of the state.

Working against the American tradition of 'rugged individualism' is the Puritan conception, so powerful in the original colonies and enduring throughout the development of the United States, that all aspects of man's behaviour are amenable to control by law and that men are better off when as much as possible of their lives is so regulated. This belief accounts for many of our queer and ineffectual laws, such as 'prohibition', which forbade the manufacture and sale of alcoholic beverages, and a host of state and local laws regarding personal tastes and habits, throw-

backs to the sumptuary legislation of medieval Europe and seventeenth-century England.

These two tendencies of American life, the frontier tradition of individuals taking into their own hands things usually left to law, and the Puritan tradition of legislating on matters usually left to private conscience, often combine to produce a uniquely American phenomenon—the enactment of laws that seem intended as ideals of behaviour rather than regulations to be observed.

It is the American tradition of freedom of individual action that is also largely responsible for the vast number of voluntary associations formed for purposes which, in most countries, are likely to be accomplished, if at all, through government rather than private action. The existence of this tradition and the myriad American associations that result from it has a two-fold effect on group relations. To many Americans, even some of those most earnestly against discrimination, government regulation of these matters is regarded as an invasion of the 'private' right to choose one's friends, neighbours and business associates and to conduct one's business with a minimum of government interference. On the other hand, these voluntary associations, some wholly and some partly devoted to the elimination of discrimination, have done a vast amount of work in the reduction of prejudice through education and in campaigning for its elimination by legislation.

This chapter has attempted to sketch the history and present state of discrimination in America and the relations of those agencies involved in solving the problem: the Supreme Court, the federal government, state and local governments and private associations. Other chapters will deal in detail with these bodies, emphasizing the problem of reducing employment discrimination through law and legal techniques. It will remain, then, to examine the relation between law and human behaviour from the most general standpoint in order to evaluate just how much has been done and can be done to adjust such difficult, personal matters as prejudice and discrimination through the impersonal processes of democratic government and law.

THE LEGAL ASPECT

Early in the development of the United States it became established that the Supreme Court, the highest tribunal in the land, had the right and the function of passing upon the constitutionality of federal, state and local legislation. Theoretically, the Court may not pass upon the *wisdom* of such legislation but merely upon the *right*, according to the Constitution and previous judicial decisions, of any law-making body to enact a specific law. But the broad language of the Constitution and the great variety of 'precedents' created by earlier decisions have given the Court considerable freedom in selecting policies it has wanted to advance at the expense of alternatives it has not found attractive. The Court, throughout its long and controversial history, has in fact often been able to impose its own philosophy of government and, by its interpretations, to engage in what is tantamount to the act of legislation.

It is necessary, for our purposes, to understand how the Supreme Court has interpreted the Constitution and its amendments, for its decisions have defined the power of the federal and local governments to enact laws and issue regulations protecting the rights of victims of discrimination. In addition, the Court has recently been in the forefront of the trend toward greater protection of civil rights of all kinds, including the right to obtain employment without disadvantage because of race, creed, colour, or ethnic origin.

The decisions of the United States Supreme Court on matters of group relations have varied greatly during the last 100 years. From about 1868, when the Fourteenth Amendment to the Constitution went into effect, until about 1937, the Court usually supported those laws which tended to enforce the separation of Negroes and Whites. Concomitantly, it acted in such a way as to weaken the effects of those tending to promote the association of Negroes and Whites—except in situations where the superiority of the Whites was clearly maintained. Since 1937, however, the policy of the Court has changed drastically and it has consistently upheld the rights of victims of discrimination. Before 1937 the Court felt it imperative to restrain the legislatures from regulating and limiting the rights of property holders: thus, during the 1920's it blocked legislation on child labour, minimum wages for women, farm problems, and public utility valuation. About 1937, however, the Court elevated the protection of civil rights to a preferred position; since then it has tended to refrain from blocking legislation on economic rights and to restrain legislatures and private persons and groups from unfairly discriminating against 'minority' groups. The new outlook of the tribunal was

clearly expressed in 1940 by Associate Justice Hugo L. Black, when he stated for the entire Court: 'No higher duty, no more solemn responsibility, rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution—of whatever race, creed or persuasion'.[1]

Of all the provisions of the United States Constitution none has been more significant for the rights of Negroes and other minority groups than the Fourteenth Amendment which came into effect in 1868. This amendment reads: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

Over and over again, in any study of minority problems, mention will be made of the three main clauses of this amendment, the 'privileges and immunities' clause, the 'due process' clause, and the 'equal protection' clause. An endless scrutiny and interminable debates have gone into the attempt to fix the precise meaning and application of the words of the legislators. Various interpretations of these clauses have had through the years a crucial impact on the welfare of minorities in the United States.

In 1873, in the very first case [1] under the Fourteenth Amendment to reach it, the Supreme Court laid the basis for a lengthy series of decisions which weakened the force of its provisions. In its final opinion, the Court established a distinction between the rights of an individual as a citizen of the United States and the rights of an individual as a citizen of the state in which he or she resides.

The privileges and immunities clause, it ruled, protects only federal rights from hostile state action. From that time onward, the Court refused to consider the civil rights of 'minority' groups as rights which they had by virtue of their United States citizenship; such rights, the Court stated or implied, were enjoyed by virtue of state citizenship and hence were not affected by the Fourteenth Amendment. In 1935, however, the Court for the first time invalidated a state law on the ground that it violated the privileges and immunities clause.[2] But five years later the Court flatly reversed its position, and thus made the clause virtually inoperative again.[3]

[1] Slaughter House Cases, 83 U.S. 36 (1873).
[2] Colgate *v.* Harvey, 296 U.S. 404 (1935).
[3] Madden *v.* Kentucky, 309 U.S. 83 (1940).

The 'due process' clause has, likewise, been the subject of changing interpretations in a changing world. Although 'due process of law' originally meant a fair hearing by a properly constituted authority in criminal and civil cases, in 1890 the Court began to invoke it to invalidate legislation which it held to be unreasonable.[1] For many years the Court protected property rights by means of this clause, but restricted the federal government's power to use it for the protection of the rights of accused persons against various forms of state action. Then, in 1925, it accepted the notion that the 'due process' clause of the Fourteenth Amendment forbids the state governments to do what the First Amendment forbids the United States government to do[2] Thus, in piecemeal fashion, the Court's interpretation of the Fourt eenth Amendment has extended the scope of the Bill of Rights until it now serves as a means of protection not only against the actions of the federal government but those of the 48 state governments as well. This extension has meant a great deal, particularly to Negroes, who have always found state legislation and state authority more oppressive than federal law and authority. In 1945 the Court took an important step in this direction when it upheld the constitutionality of a federal law (originating as far back as 1866) which has since served to deter state and local officials from depriving Negroes accused of a crime of the protection to which they are entitled.[3]

The third of the clauses in the Fourteenth Amendment, the 'equal protection' clause, has been the chief constitutional source for the protection of the rights of minorities. Its scope was considerably limited only a few years after it came into being, when, in 1883, the Court held that the Fourteenth Amendment restricted only the state governments, and not private citizens, from discriminating.[4] This interpretation still stands. In 1896 the Court upheld a state law requiring separate but equal accommodations for Negroes and Whites on railroads moving within the borders of Louisiana. In deciding this case,[5] the Court stated the famous 'separate but equal' doctrine, which inaugurated a new epoch in United States group relations, in the following words:

'A statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has

[1] Chicago, Milwaukee and St. Paul Ry. *v.* Minnesota, 134 U.S. 418 (1890).
[2] Gitlow *v.* N.Y., 268 U.S. 652 (1925).
[3] Screws *v.* U.S., 325 U.S. 91 (1945).
[4] Civil Rights Cases, 109 U.S. 3 (1883).
[5] Plessy *v.* Ferguson, 163 U.S. 537 (1896).

no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude.'

True, the Court insisted, in cases it decided later, upon adherence to this 'separate but equal' rule but with only moderate practical consequences. Thus, despite the Fourteenth Amendment, which forbids the states to 'deny to any person within its jurisdiction the equal protection of the laws', Negroes have in fact enjoyed separate but far from equal facilities in the southern states. But, even under the 'separate but equal' doctrine, Negroes have been able to win rulings that materially weakened the entire system of colour segregation in the United States. These gains have been made in two ways.

First, the Court has adopted a progressively stringent interpretation of what 'equal facilities' means, thus making segregation more costly and cumbersome than ever. As a result of a series of cases involving discrimination in education,[1] there are, today, thousands of Negroes attending unsegregated, state-supported institutions of higher learning in the South, whereas there were none a decade or so ago. Similar, although less spectacular, gains have been made in the effort to eliminate discrimination and segregation in transportation facilities, mainly through decisions [2] that interpret broadly the power of the Congress to regulate interstate commerce.

The second way in which the Supreme Court has weakened the legal basis of discrimination and segregation has been by a broadening interpretation of what constitutes action by the state and by state and local officials falling under the purview of the United States Constitution and certain federal laws. In this way Negroes have been able to advance their rights to be considered for membership of juries and, if under trial, to be judged by a jury from which none has been excluded because of race or colour.[3] They have also been able to strengthen their vote in the southern primary elections, where the right to vote counts most.[4]

After many years of seeking to weaken discrimination and segregation by securing Supreme Court decisions of these two types, a few years ago the leaders in this struggle adopted a new plan—they began to challenge the 'separate but equal' doctrine

[1] Missouri *ex rel.* Gaines *v.* Canada, 305 U.S. 337 (1938). Sipuel *v.* Board of Education, 332 U.S. 631 (1948). Sweatt *v.* Painter, 339 U.S. 629 (1950). McLaurin *v.* Oklahoma, 339 U.S. 637 (1950).

[2] Mitchell *v.* U.S., 313 U.S. 80 (1941). Morgan *v.* Virginia, 328 U.S. 373 (1946). Whiteside *v.* Southern Bus Lines, 177F. 2d 949 (6th Cir. 1949). Henderson *v.* U.S. 339 U.S. 816 (1950).

[3] Norris *v.* Alabama, 294 U.S. 587 (1935). Pierre *v.* Louisiana, 306 U.S. 354 (1939). Hill *v.* Texas, 316 U.S. 400 (1942). Patton *v.* Mississippi, 332 U.S. 463 (1947).

[4] U.S. *v.* Classic, 313 U.S. 299 (1941). Smith *v.* Allwright, 321 U.S. 649 (1944).

directly. But thus far it stands as the official view of the Court, although in a somewhat attenuated form.

Before leaving this subject of judicial review, one important decision must be briefly noted because it deals directly with the subject of employment discrimination. In 1914 the state of Arizona passed a law requiring that in all establishments with five or more workers, 80 per cent of them must be citizens of the United States. In compliance with the law, a restaurant owner informed his cook, a non-citizen, that he would have to leave the job. In holding this white anti-alien (not anti-Negro) law to be unreasonable, the Supreme Court uttered a statement which is important in the defence against employment discrimination. The Court stated:

'It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure.[1]

By and large, the history of Supreme Court decisions has run parallel to the development of the American nation, influencing and being influenced by new trends in an evolving society. In the great nineteenth-century period of commercial and industrial expansion, its decisions seemed to place the greatest emphasis on the protection of individual economic rights against government interference. In the twentieth century, when local events often have nation-wide consequences and individual and national welfare are more closely bound, its interpretations have tended to support those seeking to reduce discrimination and segregation. Recent Supreme Court decisions have thus set the stage for major advances in the protection of civil rights, while its hearings and opinions have served to educate the public and clarify the complex issues involved in the problem.

Truax *v.* Raich, 239 U.S. 33 (1915).

THE ROLE OF THE FEDERAL GOVERNMENT

Up to the present, actual legislation in the United States to curb discrimination in employment has been almost wholly confined to the states and municipalities. It is chiefly through administrative activities based upon the authority of the chief executive, that is, the President of the United States, that the federal government has exercised its powerful influence in the sphere of group relations.

The first important administrative steps to lessen discrimination were taken during the depression of the thirties. The public works programme, under which useful projects were executed to provide employment for the needy, the slum-clearance housing programme of 1937, and the better-housing programme of 1940 all contained anti-discrimination features. Similarly the act of 1933 setting up a programme of aid to the unemployed, the measures of 1937 providing employment-aid for youths of school age, and the programme later established to train workers for defence industries, all contained provisions prohibiting discrimination based on race, colour or creed.

The results of these efforts to remedy an undemocratic situation were mixed. In October 1932, the Secretary of the Treasury issued an order prohibiting discrimination in employment on public works. Shortly afterwards, the head of the Public Works Administration did likewise; but, as an authority on the subject [1] flatly states, 'neither order was effective'. However the public housing programme, as the same authority notes, took entirely different measures to realize the same aim and with much greater success. Under this programme, the government did not merely contract for work to be done but itself actually engaged in the construction of houses. Instead, therefore, of promulgating a broad edict outlawing discrimination, the housing division of the Public Works Administration ruled that Negro skilled workers must receive a stipulated minimum percentage of the total wages paid out for skilled labour; the actual proportion was to be determined by census.

This novel plan resulted in what is called 'quota employment', an arrangement by which a group is given opportunities in accordance with the proportion of its members in the community. As it actually worked out, the Negro skilled workers received a greater percentage of the total payroll for skilled workers than was warranted by the proportion of Negroes in the 1930 occupational census. Although it was 'quota' employment and hence not non-discriminatory in an absolute sense, this plan did succeed in maintaining the status Negro skilled workers had, by then,

[1] Robert C. Weaver. *Negro Labor*. New York, Harcourt, Brace, 1946, p. 10.

acquired in the building trades. It was this end that had been aimed at rather than the achievement of new gains—and there can be little doubt that in this period of unemployment and severe economic suffering, Negroes would have been displaced from many jobs by discriminatory practices.

These early government efforts also had the effect of preparing the way for later, more important, developments in the campaign to lessen discrimination. During the forties, progress in this direction took the form of three important controversial executive orders which were designed, respectively, to counteract discrimination in employment as a whole, in the ranks of the federal civil service, and finally in those industries and firms which had government contracts. These orders were milestones in the campaign to lessen employment discrimination, and warrant therefore a detailed study of their nature and consequences.

The first and most sweeping of the three federal executive orders was issued in 1941, and established the original Committee on Fair Employment Practice. This Committee soon became known as the FEPC, the initials which have since been the focus of such intense feeling on both sides of the great controversy as to the role of government in promoting equality of opportunity in employment.

The story of the federal war-time FEPC begins with the reaction of the United States to the fall of France in 1940. The United States set up its first peacetime draft and instituted a programme of military and industrial mobilization for national defence. The transition to a war economy created a shortage of labour, and the nation experienced the beginning of a period, still continuing, of full employment. But a combination of inertia and active discrimination prevented the Negro from sharing at first in the new opportunities. The fact that opportunities for white workers increased much more rapidly than for Negroes is revealed by the extent to which the latter continued to rely on the federal government for jobs in the work-relief programmes of the Works Progress Administration (WPA). In February 1939, before the start of the transition to a war economy, Negroes constituted only 14 per cent of all WPA workers. In April 1941, after the process had begun, they formed 16 per cent of the total; in February 1942, when the United States had been at war with Japan and Germany for two months, 18 per cent of all of WPA workers, and in October 1942, 20 per cent. This rising proportion of Negro workers on the federal work-relief rolls in a period of expansion reflected the entrance of white workers at a much greater rate than Negroes into jobs created by the mobilization and the war.

The federal government made several efforts to reduce discri-

mination. Business firms receiving government orders were instructed not to discriminate, but little was done to see that the instruction was heeded. The two leading trade union federations, the American Federation of Labor and the Congress of Industrial Organizations, agreed to help integrate Negroes into defence jobs. Soon a new agency was created to co-ordinate the expanding production programme. In response to growing protests, this agency too sought—but with little success—to provide more jobs for Negroes. Protests against this situation were not lacking but they seemed to avail little. Consequently, in 1941, one of the most prominent Negro trade union leaders called a meeting of Negro leaders to consider plans to remove the barriers to Negro employment in defence industries. This conference culminated in an organization called the March on Washington Movement, which held protest meetings in many communities. These demonstrations were to be preliminary to a march on the national capital if the local efforts proved unsuccessful. The movement gained momentum rapidly as the government made repeated appeals to 'national unity', to the sentiment for freedom, and against the racism of the Nazis. Finally, the March on Washington was set for 1 July, 1941. Several efforts to placate the leaders of the movement failed, until the President of the United States offered to promulgate an executive order prohibiting discrimination in defence industries. The march was cancelled, and on 25 June, 1941, the President issued his famous Executive Order No. 8802.

This order declared it United States policy to encourage 'full participation in the national defense program by all citizens of the United States, regardless of race, creed, color, or national origin'. The President reaffirmed the policy of non-discrimination and declared it to be the 'duty' of employers and trade unions 'to provide for full and equitable participation of all workers in defence industries, without discrimination because of race, creed, color, or national origin'. All federal agencies concerned with vocational training were instructed to take 'special measures' to see that these programmes were conducted without discrimination; all federal agencies that entered into contracts for supplies were ordered to include in their contracts a provision requiring the contractors not to discriminate. Finally, the President established in the Office of Production Management (OPM) a Committee on Fair Employment Practice (later known as FEPC), empowered to 'receive and investigate complaints in violation of the provisions of this order' and to 'take appropriate steps to redress grievances which it finds to be valid'. The committee was also authorized to recommend to other federal agencies such steps as it considered 'necessary or proper' to carry out the entire order.

Operating under this order, FEPC was severely limited and lived a harried existence. Its chief instruments were the informal conference, in which it sought to convince employers that they ought to comply with the President's order, and public hearings, by which it hoped to bring community opinion to bear upon employers who persisted in unfair practices. But the committee's budget was small, its status uncertain and shifting and the opposition to it (both in the administration and in the legislature) strong and enduring. After a series of setbacks, several members of the committee, as well as many of its staff, resigned. In response to renewed pressure from Negro and other organizations, for FEPC had now become a rallying-point, the President on 27 May 1943, issued Executive Order No. 9346, which set up a new Committee on Fair Employment Practice.

The new committee had virtually the same functions and authority as the old one, but it was located in the Executive Office of the President and allotted several times the funds of its predecessor. Somewhat fortified, although still without the power to enforce its rulings, it was able to act more effectively. The bitter controversy around it continued and even intensified, as its opponents (mainly southern Senators and Congressmen) sought its abolition while its advocates sought a permanent FEPC. The committee was continuously harassed in Congress, its authority hamstrung and its appropriations cut. By 1945, owing to inadequate funds, it had virtually ceased operations although it did not formally go out of existence until the middle of 1946.

To get a notion of the volume of work FEPC accomplished, it suffices to note that during its five-year tenure in various forms, FEPC handled well over 10,000 complaints of which, as FEPC has itself reported, it 'satisfactorily settled nearly 5,000 cases by peaceful negotiations'. However, for further details of the committee's work we must confine ourselves to a shorter period of time, for which the data are available in an official report.[1] From 1 July 1943 to 31 December 1944, the committee received a total of 5,803 complaints which it docketed, and took over from the old committee another 1,052 cases. An additional 1,442 complaints were received but not docketed, either because the committee had no jurisdiction in the matter, or because the complaint lacked certain definite information, such as the name of the complainant or that of the employer or union charged with discrimination. During this 18-month period, the committee disposed of about 4,800 cases out of the total of 6,855 on its active list. About 1,700 cases were settled satisfactorily, that is,

[1] U.S. Committee on Fair Employment Practice, *First Report*, Washington, D.C., 1945, and *Final Report*, 1946.

a written commitment was obtained in which an offending employer or labour union agreed to eliminate the discrimination against the complainant, to cease all discriminatory practices disclosed by the investigation, and to carry out a programme designed to prevent discrimination in the future. Some 1,500 cases were dropped because thorough investigation revealed no discrimination. The remainder of the cases were dismissed for various reasons—lack of jurisdiction, insufficient evidence, voluntary withdrawal by the complainant, etc.

The complaints were distributed more or less equally throughout the country, 32 per cent originating in eastern states, 20 per cent in the South, 22 per cent in the midwest and 17 per cent in the far west. A large number of complaints were filed in congested war production centres where non-Whites formed a large proportion of the people who had migrated there to secure employment. Colour discrimination was charged by about 80 per cent of the complainants, mostly Negroes. Nine per cent charged discrimination because of creed; almost three-fourths of these charges were made by Jews. Of the remaining complaints, discrimination because of national origin, filed largely by people of Mexican ancestry, accounted for more than half, and the rest of the complaints came from aliens. Each of these groups comprised a significant portion of the population in the area in which it was concentrated.

Most of the complaints were directed against private industry, though about 25 per cent were filed against various government agencies and 6 per cent against labour unions. Of the 22 different kinds of discriminatory acts alleged in the complaints, three-quarters were based upon charges of refusal to hire, unfair dismissal, refusal to promote and the imposition of discriminatory working conditions. The large majority of the complaints were received directly from the individuals involved, about 25 per cent were referred to FEPC by other governmental agencies, and some 20 per cent came from voluntary, private agencies of a civic, racial or religious character.

It must be admitted that in the gains recorded during these years, the manpower shortage played an important role. Nevertheless, some statistics will indicate the genuine advances scored in removing discrimination. Early in 1942, when the United States had been at war for several months, Negro workers were estimated to comprise only about 3 per cent of all workers in war production. By the end of 1944 this figure had risen to over 8 per cent. In the first four years of the war production programme the employment of Negroes increased by more than one million workers. During the same period the number of Negroes employed at more highly skilled work doubled, from half a million

to a million. Similar gains were made by Negroes in the employment of the federal government.

A clearer perspective of the trend is seen from the changes in individual firms. The employment patterns of 31 companies were examined by the first FEPC in public hearings held in 1941 and 1942. At this time, these companies employed a total of 277,681 workers, of which only 1.5 per cent were non-Whites. About two years later, the same companies were employing a total of 468,517 workers, of which 5.1 per cent were non-Whites. Thus, while the total number of workers had increased by nearly 70 per cent the number of non-White workers had multiplied almost four and a half times. FEPC also summarized the results of its dealings with 41 other companies which were closely investigated without public hearings. Similar gains for non-Whites employed were registered in these concerns. Finally, the agency reported the stories of several case studies which manifested the direct impact of its work in opening up opportunities for groups previously barred from certain industries, companies and types of jobs.

The federal wartime FEPC stirred up more public controversy than almost any other governmental agency of recent years. Its public hearings, the most dramatic but not necessarily the most important aspect of its work, received considerable attention. The impression was given that the agency was usually strongly resisted. As the previous statistical review indicated, this was not the case. Many of the cases were dismissed and, for the most part, compliance was fairly easily obtained. As the Committee itself pointed out in its *Final Report*: 'FEPC never had power to fine or penalize a violator. The last recourse was citation to the President. This was done only twice during five years of FEPC.' In the same report, FEPC summarized its own contribution 'War-plant gates . . . opened to minorities hitherto refused admittance. Government and industry were persuaded to advance many minority workers to their established skills. Members of religious sects were permitted to celebrate holy days under arrangements that they would make up the lost war work. A number of newspapers were persuaded to discontinue discriminatory want ads. Many worker groups withdrew their objections to working side by side with minority group members.'

Among the more thorough critical evaluations of this record that have been made is that of the eminent American scholar, Robert M. MacIver, who summarized the achievement of FEPC as follows:[1]

1. FEPC helped to promote equality of employment opportunity in the federal government itself.

The More Perfect Union. New York, Macmillan, 1948, pp. 157-60.

2. FEPC, through its public hearings, liberalized the employment policies of the firms directly involved, and induced other companies and labour unions, which feared exposure, to modify their own discriminatory policies.
3. FEPC, as the statistical record shows, opened up jobs and skills to Negroes from which they had been previously barred.
4. Indirectly, FEPC strengthened the forces in the community that were working for full equality and tended to give to persons traditionally subjected to discrimination the feeling that their citizenship was genuine and that the claims of democracy were capable of realization.

On the other hand, this observer [1] pointed out that FEPC tended to take on more tasks than it could efficiently handle, failed to enlist the help of other federal agencies and non-governmental groups, sometimes issued orders without adequate forethought, and relied too much upon the investigation of individual complaints. On balance, MacIver concluded, the federal FEPC was, 'within the limits of its means, a reasonably successful experiment. FEPC had a share in the combination of forces that extended the economic opportunities of groups subject to discrimination, particularly the Negroes. And it did not create, by and large, unfavourable repercussions such as might militate against further advances in this direction. It acted with discretion, but it loyally sought to fulfill the charge entrusted to it'.[2]

The work of FEPC showed that, given favourable conditions, legal techniques can channel, guide, and accelerate the forces generated by events. It demonstrated that a small measure of government authority can go a long way in securing voluntary compliance from those who discriminate. Its work also made it plain that, without genuine enforcement powers, a government agency is serously impeded in its dealings with a substantial group of recalcitrant employers and labour unions. FEPC itself declared that 'persuasion' alone could not end discrimination. It added an observation that is as valid today as it was then: 'The employer's need for war workers, or his patriotism, or dislike of exposure, each in its respective situation was a powerful incentive to stop discrimination. The practice, however, seldom disappeared spontaneously. The intervention of a third party, with authority to act if necessary, was required to start the process in motion.'[2]

The second of the important federal executive orders referred to early in the chapter dealt with discrimination in government employment. While this phenomenon may seem surprising in a democracy, it must be remembered that the employees and

[1] *The More Perfect Union*, New York, Macmillan, 1948, pp. 160-63.
[2] Ibid., p. 157.

executives of the United States Government come from all parts of the country and all sectors of life and that its make-up reflects the varied history of America with its sectional and ethnic conflicts. The government is the largest single employer in the United States with more than 2 million people in all parts of the country on its payroll. In 1940, government employees constituted a third of all people employed in Washington, D.C., the national capital.

The National Committee on Segregation in the Nation's Capital, which has made a close study of the life of the Negro in the District of Columbia, found that in 1938 only 10 per cent of the Negroes in government employment held jobs above the level of janitor or labourer. In tracing the pattern of discrimination, the national committee discovered several years ago that, with respect to this problem, agencies fell into three different categories: those that have simply excluded Negroes from more skilled and better-paying jobs, those that segregate such Negroes as they do employ, though allowing them to do the same work as Whites, and, finally, those that accept qualified Negroes for any job and do not segregate them. Since this report, conditions have been considerably improved but the pattern has not been wholly eradicated.

In the first group, the national committee placed the older, regular federal departments and the older independent agencies. In the second group, the committee placed those government agencies that have a high proportion of unskilled and industrial workers. In the third category, the committee placed a very few new agencies established because of the national emergency. The federal war-time FEPC stated in its final report that 85 per cent of the Negro government workers were in the temporary war-time agencies and that these offices employed nearly three-fourths of the Negro government clerks and about 70 per cent of the Negro professionals in the federal service.

The national committee made one of the very few detailed studies of discrimination in federal employment. In one government bureau, the committee's researchers found that only 4 per cent of the Negroes employed held a job above that of clerk whereas 43 per cent of the white workers were above that category. Among the Negro clerks 12 per cent were college graduates but among the white clerks only three per cent. White college graduates had better jobs than other white workers in the bureau but there was little difference between the kinds of job of the highly educated and the poorly educated Negroes. The researchers matched 40 Negroes and 40 Whites who were hired in the same year and whose records were the same in the eight factors that the bureau considered to bear upon a worker's efficiency and his chances for advancement. By the following year the 40 Whites

had been given a total of 12 promotions and the 40 Negroes only two promotions. 'In other words,' the committee concluded, 'when background, initial job assignment, and actual work efficiency were roughly equated, Whites were promoted six times as frequently as Negroes.'

This pattern of discrimination against Negroes in federal employment did not always exist. Immediately after the emancipation of the Negroes in the nineteenth century, very few of them could qualify for higher government jobs because they lacked both political influence and formal education. But there was a period, in the late nineteenth century, when Negroes received relatively fair treatment in federal employment. As soon as the Negroes were disfranchised in the southern states, where the great majority of them lived, and were thus weakened politically, discrimination and segregation were easy to impose upon them. They were subjected to unfair treatment in several aspects of their daily life and in employment by government as well, especially from about 1890 to 1915. The nation's capital, Washington, D.C., is moreover a metropolitan area bordering the South, and has always exhibited many southern traits. By about 1914, segregation and discrimination had been securely imposed in the federal service.

The situation persisted virtually unchanged until 1940, when the United States legislature passed a law forbidding discrimination in government employment. Then, as has already been noted, the President issued Executive Order No. 8802 in June, 1941, setting up the federal wartime FEPC and forbidding federal agencies to discriminate. One-fourth of FEPC's case load, as we have seen, involved charges of discrimination by government agencies. The United States Civil Service Commission, which is the central agency handling employment for the federal government, itself handled 1,871 complaints of discrimination between October 1941 and March 1946, according to an FEPC report. The Civil Service Commission, operating under its own regulations, found actual discrimination in only 58 of these 1,871 cases. After the war, Negroes in federal jobs found themselves in an especially precarious position as the non-discriminating temporary war agencies were discontinued. Then, on 26 July 1948, the President issued Executive Order No. 9980, the second of the three important orders under consideration in this chapter.

The order, to ensure that the 'long-established policy' of non-discrimination in federal employment should be 'more effectively carried out', directed that 'merit and fitness' were to be the only bases for handling personnel matters and authorized appointing officers to 'take appropriate steps' to prevent discrimination. The order made the heads of all executive departments

responsible and required them to designate a 'fair employment officer' to carry out each department's programme. This officer was given the power to make periodic appraisals of his department's execution of the President's order; to receive complaints and all appeals from departmental actions believed to be discriminatory; to establish machinery to investigate complaints and to take corrective action as authorized by the department head. The order provides for appeal from the fair employment officers to the department head and from the latter to the newly-established Fair Employment Board of the Civil Service Commission.

This Fair Employment Board, in turn, was authorized to review cases brought to it on appeal and to recommend action to the department head. The board's recommendation is important, for the order provides that if it is not promptly and fully carried out, the board shall report the case to the President, who may act as he sees fit. The board was also authorized to advise the various departments on fair employment policies and to co-ordinate their fair employment policies and procedures.

In its only public report to date, the Fair Employment Board of the United States Civil Service Commission has divided the programme into two parts, 'corrective' and 'constructive'.[1]

Under the corrective programme, the board has pointed out, an individual employee or an applicant or a group of either of them, or an interested organization, may file a complaint with the fair employment officer in a department alleged to be discriminating unfairly. Thus the board itself does not receive original complaints but only appeals from departmental decisions that the complainants wish to challenge.

The board has made public only one statistical summary of complaints and appeals, covering the period from 26 July 1948, when the programme was initiated, to 31 December 1951. In this three and a half year period, there were a total of 488 complaints filed against 27 different federal agencies, employing virtually all those in the executive branch of the government. Most of the complaints, 425, or 87 per cent, were filed by Negroes. Of these 425 complaints, in about two-fifths of the cases the department was able, without having to send the case on appeal to the board, to settle it to the satisfaction of the complainant. The other three-fifths of the complaints were found to have been unwarranted, for investigation on the departmental level revealed no discrimination. In regard to the complaints by Negroes which the departmental officers held to be unwarranted, there were 52 appeals to the Fair Employment Board of the Civil Service

[1] *Fair Employment in the Federal Service.* U.S. Civil Service Commission Pamphlet 44, December, 1951. Washington, D.C., Government Printing Office, 1952.

Commission. In these 52 cases the board found that discrimination existed in 13 cases, no discrimination in 32 cases, four appeals were either not accepted by the board or informally adjusted, and three were still awaiting disposition at the time of the report.

An idea of the efficacy of the new programme may be gleaned from several facts. According to the testimony of a member of the Fair Employment Board,[1] after the executive order was issued one-third of the agencies in the federal government, for the first time in their history, hired Negroes as supervisors of mixed Negro and white groups of workers or as important executives or in highly technical and professional capacities. The effects of this change upon the psychology and morale of all affected by it, directly or indirectly, can hardly be underestimated. More generally, under the new programme, only 488 complaints were received in three and a half years as compared with 1,871 in four and a half years under the old programme. More significantly, fully two-fifths of the complaints were settled to the satisfaction of the complainant. As for the board's disposition of 52 appeals, it found discrimination to exist in 13 cases, or 25 per cent, as compared with the 3 per cent found in the earlier programme.

The President's Executive Order instituting the entire programme was dramatically challenged even before the Fair Employment Board had been appointed, when a federal tax official in the southern state of Alabama announced that he would not abide by the order. His superior, the Secretary of the Treasury, wrote him immediately: 'I construe your contumacious action to be a tender of resignation from the position now held by you.' Another official was appointed in his place. After this firm beginning the programme was not so audaciously challenged again, although it did not of course meet with easy compliance everywhere.

Significant progress has nevertheless been made. As a result of numerous complaints and several decisions by the Fair Employment Board, Negroes in several southern and south-western states were finally appointed as postal clerks after years of being passed over in favour of white applicants. One traditional instrument of discrimination was the 'rule of three', under which an appointing officer is authorized to select for a job any one of three persons declared to be most eligible by the Civil Service Commission. Some appointing officers used this rule to by-pass Negroes in favour of white applicants. The Fair Employ-

[1] Testimony of Fred C. Croxton, *Discrimination and Full Utilization of Manpower Resources*, Hearings before the Subcommittee on Labor and Labor Management Relations of the Committee on Labor and Public Welfare, U.S. Senate, on S. 1732 and S. 551, 82nd Congress, 2nd Session, 8 April 1952. Washington D.C., Government Printing Office, 1952, p. 75.

ment Board soon made it clear that even the selection of one person from the three eligibles must, according to the executive order, be based upon merit and fitness, and that appointing officers must be able to demonstrate that their appointments were actually so based. In addition to their gains in United States post offices in the South, Negroes have also made considerable progress in the United States Public Health Service, the Government Printing Office, and the Bureau of Printing and Engraving.

Much information was obtained in an interview with the executive secretary of the Fair Employment Board. Most of the complaints of discrimination are filed in the clerical, semi-skilled and skilled grades, and most of those filed concern promotions and dismissals. Few of the latter type are found to be warranted by the facts. The board has the authority to send to the President any case in which its recommendation is not promptly carried out but up to the end of 1952 it had not found it necessary to take such action. The board has interpreted its functions to cover only discrimination, or denial of what it deems to be economic opportunity. This interpretation excludes segregation from the board's purview, except where such segregation actually deprives an employee of an economic opportunity. At present, there are still a few federal agencies that exclude Negroes from certain types of employment and some that segregate Negroes from white persons doing the same job.

Having considered what the board calls its 'corrective' programme, we turn now to a brief account of its 'constructive' programme, which does not deal with specific complaints but is designed to promote fair employment practices throughout the executive branch of the government. Several new procedures have been instituted to this end. Many of the government agencies now regularly review their records to check their conformity to the President's directive and study the extent to which Negroes are integrated with white workers. Numerous agencies have also broadened their sources of recruitment of workers so as to reach a larger number of prospective applicants from groups that are traditionally the victims of discrimination. Special training programmes have been instituted among the staffs and some agencies have developed techniques for integrating minority group workers into work units in which they had not been previously employed.

Some observers and interested organizations have expressed dissatisfaction with the pace at which Executive Order 9980 has reduced discrimination in federal employment. Critics point out that the fair employment officer in each agency, to whom complaints of discrimination are brought, is usually the agency's personnel officer. In that capacity, it is claimed, he has usually

been connected with the discriminatory policy in the first place. The board itself has worked cautiously, which is understandable, in view of the fact that it is not a temporary agency operating in a national emergency as was the wartime FEPC. Yet, from the small amount of data it has made public, it appears to be giving greater effect to the principle of fair employment practice than any other recent federal civil service agency has done. The board attributes the decline of discrimination in federal employment both to the greater merit and fitness of Negroes and to the execution of the President's directive. Although 'complete adherence to a policy of non-discriminatory employment in the federal service has certainly not been achieved', the board stated at the end of 1951, 'encouraging progress is being made'. This statement has not been disputed even by those critics dissatisfied with the rate of progress.

The last and most recent of the three executive orders mentioned earlier, No. 10308, was issued on 3 December 1951, and set up a Committee on Government Contract Compliance in an effort to reduce job discrimination in firms with contracts from the federal government. Some idea of the enormity of the task may be gained from the fact that, in 1952, government purchases of goods and services cost the nation more than 41 billion dollars. For more than a decade all government contracts had contained a non-discrimination clause, and as the committee itself pointed out, if this clause had been fully observed by every company, employment bias in the United States would have become a relic of the past as millions of Americans employed in every capacity would have been affected.

This new approach to the problem was, like previous steps, mainly the result of an expansion of industry. With the adoption by the United States of a programme of limited mobilization in response to the aggression in Korea, widespread agitation developed for a federal law against discrimination or, at least, for a revival of the FEPC agency of World War II. It was in response to this demand that the order was issued and it was primarily designed to implement the hitherto ineffective non-discrimination clause of government contracts.

Advocates of a strong federal agency were disappointed. It would, however, have been difficult, if not utterly impossible, for the President to have satisfied them. In 1944, Congress had forbidden the use of the President's emergency funds to support for more than one year any agency created by executive order. Aimed at the war-time FEPC, this measure meant that a new agency could only be established for a year. Congressional approval would have been required for further appropriations, thus subjecting the continuation of any strong employment

agency to review by the Senate, where it would surely have been blocked by the filibuster method that has thus far prevented the enactment of a federal FEPC law.

Executive Order No. 10308 contains several important provisions. It makes the head of each government contracting agency responsible for seeing that the contractor or sub-contractor complies with the non-discrimination clause. It establishes the Committee on Government Contract Compliance and authorizes it to 'confer and advise with' officers of the federal contracting agencies and with 'other persons concerned' in order to prevent and eliminate employment discrimination and to recommend to government officials procedures designed to accomplish that goal.

In the course of its investigations, the committee has conferred with many manufacturers supplying the federal government. 'Practically all of the industry representatives interviewed', according to the committee, 'stated that their companies have had to face the question of discrimination in one or many forms in their daily operations.' Presumably this means that there is some discrimination in all the companies with whose representatives the committee's staff conferred. In the face of this widespread violation, the committee further reported, federal officers responsible for procuring goods and services from contractors 'have had little or no experience in handling situations involving employment bias' and that they felt the non-discrimination clause to be an administrative burden.

It is not surprising, then, that the committee also found that, of 28 major contracting agencies, only two had made more than a 'token effort' to find out whether their contractors were complying with the non-discrimination clause. Further, spokesmen for all these 28 agencies informed the committee that they had 'neither funds nor staff' with which to keep track of the employment policies of their contractors. The committee measured the resulting ineffectiveness of the non-discrimination clause by the small number of complaints filed with contracting agencies of the federal government. In the two-year period 1 July 1950 to 6 June 1952, these agencies 'recorded only 40 complaints of violation of the non-discrimination clause. . . .'

The committee itself began to receive a few complaints soon after its appointment. In the ten-month period ending 1 December 1952, it received 318 reports of alleged discriminatory practices, most of them against companies under contract to the armed forces. This relatively large number of complaints reveals a widespread incidence of discrimination, but little was apparently done about it. For the committee merely referred the charges to the federal agency for which the contractor accused of discrimi-

nation was working and, as the committee itself pointed out, these agencies have not actively worked for compliance with the non-discrimination clause.

The failure to realize the potential value of this clause, despite the appointment of a special committee under a special Presidential order, has disappointed everyone interested in the reduction of employment discrimination. In its only public report to date, the committee has made several recommendations designed to remedy the situation, among which are the following:

1. An office should be designated to which individuals may bring complaints.
2. Without waiting for the first recommendation to be carried out, the government contracting agencies 'must act at once to facilitate and improve compliance with the non-discrimination provision'.
3. The committee recommends a more far-reaching and precise provision to replace the one now included in the contracts.
4. When persuasion fails to secure compliance, the government agency ought to end the contract, or seek a court injunction to secure compliance, or disqualify the contractor from future work for the agency.

It is clear, then, that Executive Order No. 10308 has, in more than a year, done very little to reduce employment discrimination in business firms that have contracts with federal agencies. It is, however, also true that this order covers so vast a sector of American economic life that its effective execution would virtually end employment discrimination in the nation. Given existing social conditions, sectional conflicts and the continued power of older traditions in American society, even the most sanguine student of group relations scarcely expects such a transformation to take place overnight.

Thus far, then, the intervention of the federal government to procure equality of opportunity in the United States has taken the form of three important executive orders which have had a mixed success. The FEPC of World War II created by the first order went about its task energetically, broke down many hitherto fixed barriers and—during a favourable period of labour shortages and national emphasis on the values of democracy—stimulated American employment to move as far as possible towards equality. The present Fair Employment Board of the United States Civil Service, a permanent agency created by the second order, has proceeded cautiously in reducing discrimination in the ranks of the government. The Committee on Government Contract Compliance, created by the third order, was able to accomplish little in the vast field allotted to it.

All these efforts reveal genuine national concern with the problem of employment discrimination and the power of the groups behind the movement to eliminate it. It must be realized that all these efforts involve relatively new methods and techniques for dealing with a huge and complex human phenomenon. Moreover, executive action represents a somewhat roundabout effort to get a federal non-discrimination programme in action, necessitated by the fact that the opposition of southern legislators has prevented Congress from enacting a fair employment law such as a number of state legislatures have already passed.

THE STATES AND CITIES

On the whole, the greatest advances in the reduction of employment discrimination have been achieved by direct legislation in states and communities where the political and regional opposition has not been strong enough to prevent the passage of such laws. The earliest laws of this type owe their enactment, in some degree, to the need for labour power and the desire to utilize fully the nation's human resources. In New York, the first state to put such a law into operation, the recommendation that finally emerged as the FEP act first came from a subcommittee of the New York State War Council whose function was the elimination of bias in war industries. Since the passage of the New York State Law Against Discrimination on 12 March 1945, 12 states and 30 municipalities have followed suit.

Most of these states and communities apply modern legal techniques to the problem of reducing employment discrimination. Whereas most older laws for the protection of civil rights (not dealing with employment) required the injured party to litigate at his own expense, the current FEP laws are civil procedures and make non-discriminatory employment a responsibility of the entire community. The responsibility for redressing wrongs is no longer lodged in the individual but in the governmental legal establishment. Eight of the states and most of the communities have laws which are enforceable in this manner, while the others are content to rely on conciliation and education to bring about the same result. At present it is estimated that enforceable FEP laws are in operation in areas that include about one-third of the United States population, about one-eighth of the non-Whites and two-thirds of the Jews.

There is considerable variety among these enforceable FEP laws, despite their conformity to a basic pattern. Their most salient common characteristic is that they are enforced by administrative agencies, unlike criminal laws which are enforced by the district attorneys and the criminal courts. However, these agencies can go to the civil courts to make their orders effective. All of them rely heavily on educational and conciliatory processes. Employers are prohibited from discrimination due to race, colour, religion, or national origin in the hiring, promotion, dismissal and conditions of work of their employees. Labour unions are forbidden to practise discrimination in their membership policies, relations with employers or with non-union workers. Employment agencies are prohibited from discriminating in classifying or referring prospective employees or from obtaining information which can be used for discriminatory purposes.

In any of these communities or states an individual who believes he has been unfairly treated may file a complaint with the appropriate agency, which then investigates the case. If the complaint is found to be unwarranted, the case is dismissed but the agency may, nevertheless, study the company's employment pattern and attempt to eliminate whatever abuses it may find. If the complaint is considered a just one, the agency seeks to adjust it by conciliation so that both the injured person and the firm are satisfied. If such a conciliation is achieved, the case is closed. If a satisfactory settlement cannot be obtained, the agency may bring the matter to a hearing. After the hearing, if the agency finds that the law has been violated, it can order the company to cease and desist from its unfair practices and (in some states and cities) to redress the wrong by hiring, promoting or reinstating the complainant. The cease-and-desist order is enforceable in the courts. A company may likewise appeal to the courts for review of an order issued by the administrative agency.

While it is not difficult to obtain a general picture of the effect of FEP legislation, it is not so easy to measure the results with precision. There is the intangible but by no means negligible influence on the psychology of all the groups concerned. Individual cases can be studied and tabulated but often—as the New York State Commission Against Discrimination has pointed out—the disposition of a single complaint may affect the employment pattern of an entire industry. There can, however, be little doubt that FEP legislation has had a marked impact on employment patterns, as can be seen simply by contrasting examples of the employment policies of various companies before and after the law was passed or by studying existing differences between those communities which have such laws and those which do not.

In 1951, the New York State Commission made a special study of all the 334 cases it reviewed in that year and summarized its conclusions in its annual report : 'In 85 per cent of the cases studied there was a definite improvement in the employment pattern as compared with the conditions which existed at the time the original complaints against those firms were filed. These changes were reflected in substantial increases in the number of members of different racial, religious, and nationality groups employed in professional, technical, skilled, semiskilled, and unskilled job categories. . . . In the other 15 per cent of the cases analyzed, although there was no evidence of continued job discrimination, no significant changes in employment patterns were found.'

The New York State commission's influence has been manifest in many ways. Industries and companies admitted groups that had hitherto been completely barred. The proportion of certain

groups increased greatly in some companies. Members of minority groups were hired in capacities for which they were qualified but were formerly never able to achieve, and the proportion of minority workers in skilled and supervisory positions increased sharply. Considering only the Negroes, though other groups also benefited by the new law, several individual cases exemplify the trend. Thus, the first examination of a firm which manufactured cameras and optical instruments revealed no Negroes among the 900 employees. In 1951, 700 additional workers were hired and 20 of them were Negroes; of these 20, 11 were skilled or professional workers. An electrical equipment company increased the number of Negroes in its production department from 50 to 100 within a year and the number of its Negro supervisors from one to three. A banking organization which had never numbered a Negro among its 3,000 employees showed, upon review, that it had taken on 15 Negroes at various levels of office work. An insurance company which had never hired Negroes took on more than 350 Negro women for clerical jobs in the first six years of the law's existence; an architectural firm which had never been accessible to Negroes hired 12 Negro mechanical draughtsmen and a Negro mechanical engineer among its 200 employees. All these instances are significant as they represent beginnings in industries often completely or partially blocked for Negroes. They also show a reduction in the kind of discrimination most difficult to eradicate and most keenly resented by minority groups, that is, refusal to accept qualified individuals for highly paid, skilled, professional and supervisory jobs.

The New York law has also played an important role in diminishing other types of discriminatory practice. Many unions have either removed discriminatory provisions in their constitutions or have made such provisions inoperative in New York State. From 1945 to 1951, the commission checked more than 7,000 establishments which used application forms calling for information from prospective employees. More than 2,000 of these companies were discovered to be making unlawful inquiries and were requested to adopt revised forms. Discriminatory advertisements in newspapers were outlawed. The discontinuance of these practices tends to make discrimination in hiring difficult even when that is the company's intention.

In the reports of other states and communities covered by FEP laws, similar advances were recorded. Reports from New Jersey during 1945-51 included statistical data on complaints and their disposition and case studies showing the new opportunities opened in many companies and in labour-union membership. During this period 11 surveys of employment patterns were made, the most comprehensive one, in the spring of 1951, covering 129

of the largest employers in the state with a total of 76,902 workers. Of these firms, 90 employed Negroes, 66 employed them in skilled jobs, 31 in supervisory capacities, and 17 in white collars jobs, a considerable improvement in all categories over previous years.

The rates of change in other states, Massachusetts, Rhode Island, Connecticut and Oregon, were about the same. Massachusetts reported that 'literally thousands of jobs, for the first time, have been opened to representatives of minority groups', and that minority group members were integrated into their new jobs without creating discord and to the profit of the companies. Cities such as Minneapolis and Philadelphia reported an unprecedented influx of minority workers into city government agencies, banking and insurance, finance, real estate, transportation, communication and public utilities.

The experience of these communities under FEP laws has emphasized the importance of education and training. Previous discrimination in education and training prevents many persons from acquiring the skill necessary to qualify them for certain kinds of employment. As discrimination in training is reduced, more members of minority groups become qualified for professional and skilled jobs. FEP agencies will thus gradually be in a much better position to carry out their task of making employment depend on qualifications rather than on race, colour, religion, or origin.

Various citizen groups interested in promoting FEP legislation in their own communities have also made surveys and compilations to indicate the extent of discriminatory practices. The contrast is illuminating. Thus, in Pennsylvania, a survey made in December 1952 covering more than 1,200 business firms employing almost 900,000 workers, revealed that 89 per cent of these employers engaged in some form of discrimination, slight or serious. The intensity of discrimination was greatest in the hiring of persons to fill the more skilled, better paid and more desirable jobs.

In Ohio, in March 1953, an official of the State Employment Service reviewed the picture of minority group employment before the state legislature. Surveys made in 1949 and 1951, he stated, showed that in the cities of Columbus and Toledo, 9 out of every 10 job openings handled by the government-operated employment agency had some restriction as to race, creed or colour; in four other large Ohio cities, one out of every two openings was similarly restricted. Moreover, nearly all the unrestricted openings were for unskilled positions or in domestic service. Negroes constituted only 6.5 per cent of the Ohio population but accounted for more than 16 per cent of the total amount of money spent by the state for unemployment compensation.

In the city of San Francisco, various individuals and groups presented evidence which indicated that the frequency and intensity of discrimination was much higher there than it was in similar communities with FEP laws. The records of the state employment service showed that 40 per cent of the job orders received explicitly excluded one or more ethnic or racial groups. State officials indeed expressed the belief that, on the basis of actual hiring, 90 per cent of the available jobs would be found closed to Negroes and 75 per cent to Orientals. In two studies, the San Francisco Council for Civic Unity found that out of 37 private employment agencies, 17 refused to accept Negroes for clerical jobs and six said they had no such openings; nearly all job application forms used by banks, insurance companies and manufacturers, contained at least one question on race, religion or ethnic background. The large majority of vocational training schools refused to admit Negroes or discouraged them because of the difficulty in placing them in jobs. While Negroes could get jobs as janitors, elevator operators, waiters, cooks, etc., despite repeated efforts by interested organizations no openings for them had been found in department stores, banks, insurance firms, etc. Surveys and statements of all kinds indicated that a similar situation prevailed in such large cities as Detroit, Cincinnati, etc. Nearly all the official state employment agencies in the states and communities not covered by FEP found themselves severely limited in utilizing available manpower by the discriminatory policies of many employers.

Employment service is markedly different in the eight states that have enforceable FEP laws. In the four states that have been studied—New York, New Jersey, Massachusetts and Connecticut—the state employment services refuse to accept discriminatory job orders and all of them make great efforts to persuade employers to eliminate discriminatory stipulations.

The New York State Employment Service's policy of refusing discriminatory job orders antedates the New York FEP law but the passage of the law has helped make it more effective. At present, upon receipt of a discriminatory order, the employment service informs the employer that it is either contrary to the law or the policy of the agency. If the employer refuses to eliminate the discriminatory requirement, a staff member may visit him and explain the way the state employment service operates. If the employer remains recalcitrant, the agency reports the matter to the State Commission Against Discrimination, which administers the FEP law. The commission investigates, takes appropriate action and reports its findings back to the employment service. The number of discriminatory orders received by the service dropped markedly with the passage of the FEP law, falling from

999 in 1944 to 697 in 1945, and has continued to decrease since. In 1944 it was able to persuade 59 per cent of employers sending in such orders to amend them; in 1951, it secured amendment from 81 per cent.

The officials of the employment services of New York, New Jersey, Massachusetts and Connecticut agree in considering the FEP laws of their respective states as highly successful. They state that employers do not tend to by-pass the state agency because of its non-discriminatory policy and that the vast majority showed little or no resistance to the new policy. Most of the agencies have also reported a sharp rise, both in absolute numbers and in proportion to total placements, of non-white workers placed in jobs at all levels, including the more skilled ones. Several factors have combined to make these advances possible. The FEP law makes it possible for them to carry out an effective policy of non-discrimination. Improved educational and training facilities for non-Whites, full employment, and the fact that non-Whites constitute an increasingly greater proportion of the labour force in the north-east have also helped to create a situation favourable to these advances.

Despite the manifest accomplishments of FEP, however, many individuals and groups espousing the cause of equality of employment opportunity have been sharply critical of what they consider the 'timidity' and over-cautiousness of the agencies. It has been argued that the agencies do not supply enough data to permit detailed studies of their methods and accomplishments, and that their public relations policy is too timid, with the result that they neglect opportunities to encourage complaints and deter violators of the law. It is also claimed that the excessive caution makes the settlement of complaints too slow, that the complainants are upheld in too small a proportion of the cases and, more importantly, that the agencies rely excessively on individual complaints whereas they should systematically select whole areas for study and correction.

The agencies have rarely replied to their critics and it is not necessary here to report their answers in detail. It is necessary, however, to point out that they are engaged in administering new laws which apply to human relations in an entirely new manner, bringing the power of the state to bear in a domain that has hitherto been regarded as private. The dangers of excessive haste and reliance on compulsion are obviously as great, if not greater, than those of caution and reliance on the good will of the employers. Indeed, nearly all the agencies administering enforceable FEP laws have stressed the conciliatory and educational features of their work rather than their power to compel observance. In actual practice, no great advances can be made among

Selected aspects of operation of state and municipal FEP statutes

	Connecticut	*Massachusetts*	*New Jersey*	*New York*	*Oregon*	*Rhode Island*	*Washington State*	*Minneapolis*	*Philadelphia*
Effective date	14 May 1947	21 Aug. 1946	16 Apr. 1945	1 July 1945	16 July 1949	1 July 1949	18 June 1949	5 Feb. 1947	12 Mar. 194
Annual budget [1]	$66,768	$65,610	$83,740	$377,516	$19,633	$37,140	$12,050	$10,471	$110,096
Administrative agency	10-member Commission on Civil Rights.	3-member Commission Against Discrimination.	Division Against Discrimination in Department of Education and 7-member Commission on Civil Rights.	5-member State Commission Against Discrimination.	Fair Employment Practice Division, Bureau of Labor.	5-member Commission for Fair Employment Practices.	5-member State Board Against Discrimination in Employment.	5-member Fair Employment Practice Commission	5-member Commission on Human Relations.
Remuneration	Per diem	Partial	None	Full		Partial	Per diem	None	Per die
Full time staff members [2]	14	10	12	56	2	5	2	2	15
Total number of cases decketed.[3]	254, 30 June 1951.	715, 30 Nov. 1951.[4]	939, 30 June 1951.	2,750, 31 Dec. 1951.	49, 31 Dec. 1951.	103, 31 Dec. 1951.	100, 30 June 1951.	178, 31 Dec. 1951.	807, 31 Dec. 1951.
Proportion of settled cases [5] in which—	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*
Discrimination was found [6]	61	69 [4]	48	53	63	60	63	55	46
Discrimination was not found.	39	32 [4]	52	47	37	40	37	45	54
Proportion of cases filed against—									
Employers	91	67 [4]	85	82	69	82 [7]	58	80	76
Employment agencies	4	8 [4]	3 [8]	8		6	18	5	6

Labour organizations	5	3[4]	5	9	31	6	13	2	6
Others		22[4,9]	7[8]	1		6	11[10]	13	12[11]
Proportion of cases based on charge of discrimination because of—									
Race or colour	95	70	96[8]	69	96	62	97	78	64
Religion	4	18	4[8]	17	4	5	3	18	7
National origin, ancestry	1	12	7	6		12		4	3
Other reasons				8		21[12]			26[13]
Proportion of cases charging discrimination in—									
Refusal to hire	66	([14])	75	45	53	60[7]	([14])	([14])	51
Conditions of work	12		3	11	8	7			8
Dismissal	13		14	21	8	10			11
Up-grading			3						
Union membership or privileges.	5		2	9	31	2			5
Application forms									12
Advertisements									12
Agency refusal to refer	4			7		6			1
Other			3	7		15			

[1] Fiscal year ending in 1952 or 1953, except for Oregon, which is for calendar year 1951.
[2] 1952, including clerical workers but not including members of the commissions.
[3] From effective date of the statute until the date given for each State or municipality.
[4] Includes 110 cases of discrimination on the basis of age.
[5] Omitting cases pending, withdrawn, and over which the administrative agency had no jurisdiction. The percentage figures refer to the number of these cases, except for several states: for New Jersey the percentages refer only to 693 'formal complaints', for New York to 2,103 'verified complaints', for Washington to 71 'formal complaints'.
Includes discrimination as charged in complaint, or other discriminatory acts discovered.
[7] Official report gives data only roughly comparable.
[8] Data available only to 30 June 1949. Where percentages are given for the period up to 30 June 1951, they were obtained by prorating data for the period up to 30 June 1949.
[9] Official report gives no breakdown for this large miscellaneous category.
[10] 8 cases out of 71, including 6 city government agencies, 1 county, and 1 state.
[11] More than one-third against city government agencies.
[12] Mainly cases of 'general noncompliance with the law'.
[13] Includes unlawful practices in application forms and advertisements.
[14] Data not available in official reports.

Sources: Official reports issued by state and municipal administrative agencies, and special correspondence with agency officials.

basically hostile employers, no matter how much they are forced to comply in appearance. As the New York State Commission Against Discrimination stated in its 1948 report, 'it would be of little avail if compulsive action on the basis of individual complaints resulted in temporary compliance which could only be maintained by a policing operation that in the end would assume formidable proportions'.

It is apparent, then, that the educational work of the various agencies is of paramount importance. All the agencies do extensive educational work of two types. In individual cases, they seek to adjust the matter by persuasion, and in the process undertake to educate violators of the law in the principles of democratic group relations. They also attempt to educate the community as a whole by public programmes designed to make the law and its provisions known and to convince people of its worth. The agencies also plan and participate in programmes designed to develop healthy intergroup relations in realms other than that of employment. Thus, the New York State commission in 1951 filled 500 speaking engagements, distributed educational material through the state, sponsored more than 2,000 showings of 10 films to a total audience of a quarter of a million people, and recorded radio and television programmes that have been replayed many times on local stations, in schools, libraries and civic centres. Similar efforts, in proportion to the population of their communities have been made by most of the other agencies.

Nevertheless, the most direct, tangible picture of the effect on communities is through the data supplied by individual cases. The following table summarizes the work done by the agencies since their inception, as well as other pertinent factors. It seems necessary to remark, again, that each case may have an effect far beyond itself, often leading to a change in an entire industry or in the whole policy of a labour union, private employment agency, etc.

One of the most encouraging results of FEP legislation has been the change in the attitudes of private employers, the group most affected by the new restrictions, and who were, as a rule, hostile to FEP laws before their passage. The tact and caution of the agencies has convinced many employers that the law is not intended to harass them or restrict their freedom to run their businesses, and that they are indeed benefited by the resulting enlargement of their labour market. Early in 1951, the magazine, *Business Week*, asked employers what they thought of the enforceable FEP laws operating in their community. The magazine summarized the responses: 'Some employers still think there's no need for a law, but even those who opposed an FEPC aren't actively hostile now.' One of the companies responding to the

Business Week inquiry was the Aluminum Co. of America, with large plants in six states having FEP laws. This company reported that the new legislation had scarcely affected its personnel policy at all; only minor changes in record-keeping had to be made. Eleven other firms, including an insurance company, metal works, and textile, clothing and paper factories, responded more positively to the inquiry. All 11 were favourable to the law and reported that it had not interfered with their right to hire the most competent employees they could find and had not created any serious problems.

The FEP agencies have also taken the opportunity to publicize reports by employers who have testified to the utility of the law and the fact that the kind of trouble that had been dreaded had not materialized at all. In 1952, for example, the New York agency, in a statement to the United States Senate Committee on Labor and Public Welfare, presented the findings of a 'representative of an association of retail merchants', a 'financial district observer' and a 'public utility company'. The first testified that the law has simple requirements that impose no hardship upon an employer; he is asked merely to hire the best person for the job. The second reported that, although discrimination continues, the law 'has had a fine effect upon the employment practices of banks and brokerage houses in the financial district'. The third thanked the FEP agency for its fair consideration of the company's employment practices and remarked that the agency's work has been 'of definite value to us in appraising our personnel methods and practices.' The company expressed its willingness and desire to co-operate with the agency in eliminating prejudice.

Other agencies, too, reported favourably on the reactions of employers, workers and the public. The Rhode Island Commission stated that it had convinced many employers 'on the basis of test and experience' of the groundlessness of their early fears that their employees would resent the hiring of minority groups, or that the use of such workers as salesmen and saleswomen would lead to a drop in business. Philadelphia and Minneapolis have both published reports in which the officers of important companies state unequivocally that the new employment practices have subjected them to no serious inconveniences and have actually benefited them in many ways. Despite some grumbling on the part of diehards and those who oppose government regulation of even the mildest variety, it seems safe to say that, thus far FEP legislation has been accepted much more readily by the business world, labour and the public than had been anticipated.

Public acceptance is also evinced by the relatively small amount of litigation the new legislation has caused. With one slight exception, the constitutionality of the new legislation has never

been challenged, but a small number of the rulings of the agencies of New York, Connecticut and Philadelphia have been contested in court. In Connecticut a dairy company challenged a ruling by the commission which stated that it had discriminated by refusing to hire a Negro. The commission's ruling was upheld, but it was also ruled that too great an interval had elapsed for the commission to order the company to hire the complainant and that it could only compel the company to 'cease and desist from refusing to hire him' if he should again seek employment. As a result of this decision, the commission has asked the legislature for the express power to require affirmative action from those who have been found to have discriminated illegally. In Connecticut, too, a labour union challenged a ruling by the commission which ordered it to cease and desist from refusing to admit two Negroes solely because of their race. The union also brought into question the constitutionality of the legislation, thus supplying the only 'test case' of all FEP legislation thus far. Both the ruling and the constitutionality of the law were upheld by the highest court of the state.

In New York State, an association of private employment agencies challenged the power of the state commission to require employers and employment agencies to post a notice summarizing the FEP law and prohibiting certain pre-employment inquiries, the answer to which might be used for discriminatory purposes. The contentions of the commission were upheld in the highest court of New York State. The only other court challenge took place in Philadelphia, where a worker asked the court to compel the commission to hold a hearing of her case which the commission had decided to be without merit. The court refused to act and argued that the commission was an agency with discretionary power and could not be forced to use any power it did not choose to exercise.

Although the FEP agencies have rarely found it necessary to use the power of the courts and most of their results have been accomplished by voluntary agreement, all the administrators have agreed that the power to compel adherence is indispensable to the effectiveness of a public policy of non-discrimination. The most striking example of the importance of this feature was the experience of Cleveland, Ohio, which changed a 'voluntary' FEP plan to a 'compulsory' one. The executive director of the administering agency informed a U.S. Senate Committee 'of the dramatic difference that had occurred when the voluntary plan was abandoned and the so-called enforceable policy was adopted'. Officials who served on both the 'voluntary' board and on the 'compulsory' board, he added, were surprised at the change in the reaction of employers when approached by a government

agency with enforcement powers rather than by a voluntary committee with no means of compelling adherence to its suggestions.

While FEP has been criticized by those who advocate a stronger programme as well as by those who believe that no compulsion is necessary or advisable, there is much evidence of the success of the present cautious but firm policy. Large areas of discrimination have been eliminated or greatly reduced. Thousands of new openings have been found for members of minority groups. Unions have broadened their membership policies, firms and employment agencies have eliminated questions leading to discrimination from job application forms, and newspapers have adopted a policy of rejecting discriminatory 'want ads'. Community education in democratic group relations and intergroup programmes sponsored by FEP agencies have enrolled public opinion against discrimination. Moreover, a ready and often enthusiastic compliance from those groups and individuals most likely to be hostile to the new policies indicates that the gains scored are in all likelihood permanent and irreversible.

All in all, the experience of communities with FEP laws would seem to demonstrate the efficacy of law as a means of reducing discrimination in employment. The relationship of employer to worker in a modern industrial society is so basically rational and devoid of personal whim that, as an almost purely economic matter, it becomes amenable to legal controls. For many years now the federal and state governments have regulated, by law, employer-worker relationships with regard to sanitation, health, accidents, child and female labour, wages and hours, unionism, etc. Discrimination in employment based upon irrelevant considerations of race, colour, religion, and origin has now also taken its historic place among those human relationships subject to legal control.

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THE VOLUNTARY AGENCIES

In the preceding chapters, there has frequently been occasion to mention the influence of the voluntary organizations on the structure of group relations in the United States. These organizations are a prominent feature of American life, and their profusion and energetic activities have amazed observers from abroad. An inevitable and irreplaceable part of the American form of democracy, they have given the United States the reputation of being a 'nation of joiners'. As the astute French observer of nineteenth century America, Alexis de Tocqueville, remarked, 'wherever, at the head of some new undertaking, you see the government in France or a man of rank in England, in the United States you will be sure to find an association'.

The association has been one means by which Americans have been able to compensate for the fact that their democracy tends to regard all citizens as unattached individuals. As de Tocqueville pointed out, from the moment they combine, 'they are no longer isolated men, but a power seen from afar whose actions serve for an example, and whose language is listened to'. There are organizations in American dealing with nearly every aspect of human life, with annual budgets running to millions or down the scale to a few dollars. It is only to be expected that a large number of them should be concerned with the American problems of discrimination and the infringement of the rights of minorities.

Primarily, the agencies have functioned in two different ways with respect to these problems. They have engaged in far-reaching campaigns to educate the public to the dangers of unequal opportunity and the need for action to remedy it. They have also played a leading role in instituting such remedial action, in securing legislation and the application of legal techniques to promote equality of opportunity. In fact, these two kinds of work are perhaps the most conspicuous of the activities of all non-governmental associations in the United States. There are hundreds of voluntary agencies of this type scattered throughout America. They range from permanent nation-wide co-ordinating agencies to small, temporary neighbourhood groups established for some local, immediate goal whose achievement may terminate the life of the organization. Indeed, one observer has stated: 'It sometimes appears as if at least one organization now exists in America for each objective and for each conceivable path to that objective, and that these organizations are supplemented by a vast number combining two or more objectives, plus a superstructure of co-ordinating and special-purpose agencies.'[1]

Joseph B. Robison. 'Organizations Promoting Civil Rights and Liberties'. The *Annals*, vol. 275, May 1951, p. 18.

These associations spend millions of dollars annually to promote equality and they differ greatly among themselves in the nature of their organization, purpose, activity and method. The variety of these organizations is evidenced from a random sampling of names: the National Conference of Christians and Jews, the Southern Regional Council, the New York State Committee on Discrimination in Housing, etc. Some associations are composed either of members of specific groups or of those interested in the welfare of those groups, such as the National Association for the Advancement of Colored People, the American Jewish Committee, the American Jewish Congress, and the Japanese American Citizens League. Some of these are interested in all forms of group relations while others are specifically concerned with employment, education, housing, immigration, etc.

The type of activity they engage in is usually intimately related to their belief in the efficacy of a chosen method. The creation of public good will and the education of the community as a whole are undertaken by some, while others concentrate on bringing together diverse groups of people or in confidential negotiations among important public figures. There are groups which specialize in research or litigation, in initiating and supporting legislation, or in negotiating personally through government officials. Some organizations combine two or more of these activities.

These organizations have had a palpable, concrete influence on the course of group relations in America. Some of them indeed have been the prime movers in the passage of legislation and the adoption of other legal means to reduce employment discrimination. In an earlier chapter, this report described how the Negro agencies in 1941 forced the promulgation of the executive order which established the first United States Committee on Fair Employment Practice. Indeed, the very notions and details associated with an FEPC of any kind is the result of the research, thought and activity of the associations concerned with group relations. The idea and blueprint of an FEP agency was evolved in the private agencies rather than in the executive or legislative branches of the federal or state governments. Before these bodies acted, the voluntary agencies conducted campaigns to arouse the community to the problem; they made the governments aware of the urgent need for remedial action and of the kind of action required.

In the course of their activities, these agencies have accumulated a vast fund of knowledge about their subject and have developed many techniques and skills in all phases of their work. These factors, of course, have not guaranteed success in all their endeavours. Their most conspicuous failure, about which they

feel deeply, has been their inability to rouse the nation sufficiently to induce the United States Congress to enact a permanent federal fair employment practice law. Into the campaign for this legislation, the agencies have undoubtedly poured more energy, money, hope and time than they have into any other single venture of recent years. But they have as yet been unable to remove or by-pass the three most formidable obstacles to the enactment of such a law: the unyielding opposition of some powerful northern business groups, the bitter hostility of the representatives of the southern states in the United States Congress, and the indifference of the representatives from areas essentially rural in composition or outlook.

It is in the states, as has been noted, that they have scored their greatest triumphs. These triumphs have been in no small measure due to the complex and regular procedures that have been developed by the organizations and systematically put into practice in those states in which they have won as well as those in which the campaign is still continuing. Usually, they begin by forming a single, state-wide central agency to co-ordinate the activities of all the ethnic group associations, church organizations, civic leagues and trade unions. Then they join in a planned appeal to the general community and the organized groups within it in order to influence the legislators in favour of a particular proposal. An effort is then made to work closely with political leaders in the parties and in the executive and legislative branches of the government. These tactics require the associations to sponsor public meetings, advertise in the press and over the radio, to publish educational and hortatory material, and to confer with influential individuals and groups. In this attempt to function through the complex processes of a modern democratic state, the agencies learn much about the actual political life of their communities and, reciprocally, contribute much to the political education of the people.

Despite the knowledge and skills they have acquired through these procedures, they have by no means been uniformly successful in securing their objectives. In 1951, for example, fair employment practice proposals failed in 17 states. Such failure is most frequently due to two of the same obstacles that are encountered in the effort to pass federal FEP legislation: the indifference of rural legislators and the opposition of business interests.

In many state legislatures, the number of representatives from rural areas is much greater than is warranted by the size of their constituencies. Relatively few members of [illegible] groups are to be found in these areas and the rural representatives are traditionally sceptical of all proposals advanced by urban groups. It becomes necessary then for the advocates of FEP legislation

to secure the backing of the political party that has a majority in the legislature. It is generally the only way by which enough of the rural votes can be mustered to make a proposal pass.

The opposition of organized business interests is very powerful, particularly since the voluntary agencies are usually nowhere near as strong economically or politically until they have mobilized considerable public sentiment behind them. Various techniques are employed by the business groups which likewise have considerable experience in influencing public opinion. Most business groups have argued against the need for FEP legislation on the grounds that actual discrimination is not widespread enough to require public correction, that a law cannot 'change human nature' and is bound to prove ineffectual, or that it is unfair to burden business with the correction of abuses which stem from attitudes of the whole community. In one state, business interests organized themselves into a 'Committee for Tolerance'. In some extreme cases, business has attempted to label the movement for anti-discrimination laws as one originated, dominated or primarily for the benefit of 'leftist' or 'Communist' forces. This kind of attack was most effective in California where it was probably the major factor in the defeat of an FEP proposal by state-wide referendum in 1947.

The hostility of business interests is by no means uniform, however, and in one conspicuous case business interests actually played an unusual role in the movement for an FEP law. In 1947 in Cleveland, Ohio, a movement for an FEP law began to make progress in much the same way as in other localities. A year later, after several hearings, it seemed likely that such a law would be enacted by the city council. The local chamber of commerce, which for years had opposed such legislation, now came forward with a suggestion that a voluntary plan be tried. As a result, the legislative proposal was not enacted and the Cooperative Employment Practices Plan was instituted early in 1949.

The Cleveland Chamber of Commerce supported the voluntary plan for about a year and conducted a vigorous campaign of public education and direct negotiation with employers. At the end of the trial period, it was generally agreed that the voluntary plan had not lived up to the expectations of its advocates. It was ineffective against employers who refused to co-operate and put a burden on those who did. It was utterly unable to deal with discrimination by employment agencies and trade unions. As a result, in January 1950 Cleveland adopted a compulsory anti-discrimination ordinance with the active support of the chamber of commerce. It was probably the first time a business group of comparable size had endorsed such legislation before enactment. Indeed, some of the business men who had served on the

voluntary committee became members of the municipal agency that administers the enforceable ordinance.

The State of Ohio also supplies an example of the importance of a somewhat different type of voluntary organization. Several of the smaller cities in Ohio have passed FEP ordinances. These cities are located in steel-producing localities in which the United Steel Workers of America, a leading trade union in the Congress of Industrial Organizations, has considerable power by virtue of the fact that its members constitute a large number of the voters of these communities. Trade unions have also played a prominent role in other campaigns for anti-discrimination laws and in many localities; unions affiliated with both the CIO and the American Federation of Labor have been in the forefront of the movement for FEP legislation. Yet among trade unions, as elsewhere in American life, diversity is the rule. Some older, tradition-bound unions which, themselves, discriminate against Negroes have opposed such legislation. In Illinois, in particular, some AFL unions have taken just such a stand in marked contrast to the overwhelming majority of organized labour in the United States.

The record of the voluntary agencies, though on the whole impressive, is by no means uniform. While they have been alert, skilful and active in securing the passage of FEP laws, their attention and diligence has tended to flag once this objective has been reached. By and large, they have failed to play a significant role in the enforcement of the legislation for whose enactment they have worked so ably. There are several reasons for this failure. For one, the voluntary agencies have generally welcomed the respite that comes after victory in a long, arduous struggle. Other important tasks have claimed their energy and they have been willing to leave enforcement to the official bodies charged with the task. And many of the official agencies, established for the most part by conservative political interests, have actively or passively discouraged the association of 'reformers' with the administration of the law. Nevertheless, there is certainly an important place for the private agencies in the enforcement of the new laws. Thus far, they and the governmental bodies have failed to find it. Another matter in which the voluntary agencies have failed is the direct attempt to reduce employment and other forms of discrimination through persuasion and appeals to good will—it is indeed the patent inadequacy of these efforts that has led to the adoption of legal approaches in their stead.

The voluntary agencies have, on the other hand, been most successful (a) in promoting the adoption of these legal methods which *have* reduced discrimination; and (b) in reducing discrimination within their own ranks.

This report cannot of course go into all the known instances

in which voluntary agencies of all kinds have eliminated internal discriminatory practices. It need only point out that democratic group relations have been established in hundreds of associations with a membership of millions during recent years. For minority groups, this has meant not only the elimination of discrimination within important social spheres but considerable improvement in the elimination of discriminatory impediments to their careers. To appreciate the importance of this advance, one has only to examine recent reports on group relations. The groups that have thus democratized their membership include professional associations (e.g. doctors, lawyers, nurses), religious bodies (Catholic, Jewish and various Protestant groups), trade unions, fraternal orders and lodges, college fraternities and sororities and civic associations. The trend has even taken hold in the southern states where some state-wide medical associations have recently begun to admit Negro doctors to membership or to certain types of meetings.

LAW AND HUMAN BEHAVIOUR

The preceding chapters have dwelt on the various ethnic groups in the United States, the kinds of discrimination to which some of them are subjected, the role of government and voluntary agencies in the social and political life of America, and the efforts of the federal, state, and municipal governments to reduce discrimination. Throughout, attention has been focused upon two subjects: discrimination in employment, and the use of law and legal techniques to combat it. While it was also pointed out that there have been many other influences and methods that have helped reduce employment discrimination, in the main this report has concentrated on inquiring how effective the relatively new methods of law and legal techniques have been in this direction.

One of the conclusions that emerges is that more precise studies are required in order to make a complete evaluation. Nevertheless enough information is on hand, as has been seen in the foregoing chapters, to justify the conviction that among the most effective ways of combating discrimination in employment in the United States is the application of law and legal techniques. Additional studies are needed not to substantiate this conclusion but to make remedial action more effective by providing fuller information about the nature of the problems and specific means for solving them.

It is certainly not the intention of this report to insist that law is the only, or always the best, way to reduce employment discrimination. The intention has been to point out that law has been effective to some degree and to show how, where and why it has been so. We have seen that there are several kinds of law and legal techniques. Perhaps the most common type is the kind of law enacted by a legislative body, such as the state fair employment practice laws. There is also the kind of law that is embodied in an executive order, or an administrative ruling, such as those considered in the chapter dealing with the work of the agencies set up by the President of the United States. There is also the kind of law that is created in the decisions of the courts.

Frequently, the opponents of laws to reduce discrimination argue that 'you can't legislate morality', and that 'education' is the best way to get people to behave 'morally'. This sort of argument is plainly beside the point. There is no reason at all to exclude the educational approach but, as we saw, anti-discrimination laws can certainly make education more effective. Furthermore, anti-discrimination laws are no more designed to make people act 'morally' than are any other laws. Employers in many industrial countries are now required by law to maintain certain

safeguards against injuries to workers and to help compensate for such injuries; these arrangements are costly to the employer and benefit chiefly the worker. Are such laws to be interpreted as seeking to make employers act 'morally'? Perhaps so, if one defines 'morally' as meaning simply conduct in conformity with some humanitarian ideal. But if we take 'morally' to mean not merely conforming to the law but a profound belief in the principle behind it, then we are speaking of two different things: obedience to a law, and a belief in its purpose. These two go together frequently, but not necessarily. Thus a law may effectively get employers to contribute to the physical safety of their workers, without in the least changing the employers' attitudes toward the workers.

Employment has become, in highly industrialized, urbanized societies, an impersonal relationship that has been regulated in many ways. Anti-discrimination laws simply regulate it in another way. Therefore although it may be true that law is not the most efficient means of modifying personal tastes and attitudes, it does not follow that law cannot effectively eliminate certain forms of discrimination. Discrimination is simply a way of acting based upon attitudes. The law strikes directly at the acts of those who discriminate, rather than at their beliefs. Ultimately and indirectly, however, the law can modify attitudes and beliefs by changing behaviour and helping to set up conditions that induce other changes. Moreover, law, because of its association with the immense power and prestige of the government, can have a particularly potent influence on certain types of prejudiced persons and certain types of discriminators.[1]

On the whole, laws against discrimination can do neither more nor less than law and legal techniques in general can do to influence social life. One of the primary functions of law is to codify and give status and power to our highest ideals of conduct rather than our baser instincts and practices. This, in itself, would considerably strengthen equality of opportunity. The argument against antidiscrimination laws which holds that laws should not be used to alter private tastes is plainly in error because all law is more or less involved in such alteration or control. It is incidentally a remarkable phenomenon that many who utilize this objection themselves support the network of law in the southern states that *requires* discrimination or segregation and hence exercises compulsion on private tastes and attitudes.

Law can also establish a right to something and create an expectation that can be turned into reality, thereby providing a basis for desirable developments. Thus, for many years Negroes

[1] For a summary and evaluation of evidence bearing on these points, see Morroe Berger, *Equality by Statute*, New York, Columbia University Press, 1952, Chapter V.

were discriminated against in the selection of juries in the southern states, despite the fact that such a practice had been outlawed. For a long time Negroes rarely claimed the rights to which the law entitled them. But once they began to insist upon these rights, the existing laws and court decisions formed the basis of their new appeals and the new court decisions in their favour. This pattern has been true in the field of higher education in the South, in which Negroes have recently made extraordinary gains on the basis of rights established by law.

Not only can law set up a new expectation, but it can also be the determining factor in a situation which can move in either of (at least) two directions because there are powerful forces at work on both sides. Gunnar Myrdal has called such a situation an 'indifferent equilibrium', that is, one in which there are many possibilities.[1] In such a case, law can be the decisive factor pushing the situation in the direction of equality of opportunity rather than in the opposite one. Usually, social situations are not all of a piece but are made up of complex, contradictory elements. Law can lend its support to one group of values rather than another and thereby affect the trend of the entire situation or even the state of public opinion. This point is relevant to a range of behaviour and opinion beyond the area of discrimination and prejudice. Thus, the psychologist Hadley Cantril has offered the following generalization about public opinion based on studies in the United States: 'When an opinion is held by a slight majority or when opinion is not solidy structured', says Cantril, 'an accomplished fact tends to shift opinion in the direction of acceptance.'[2] His reference to an 'accomplished fact' may be taken to include laws.

Another important function of the law is to accelerate change in the direction in which more basic but less directly controllable forces are moving. An example of this function is the role of the war-time federal Committee on Fair Employment Practice. This study has touched on the fact that two forces had operated to expand equal opportunity in employment for Negroes: the manpower shortage and the emphasis upon democratic ideals in World War II. In this situation FEPC was able, in a discernible manner, to channel and guide these influences and thus to accelerate the rate of change they induced.

These are the things law can be made to do. Whether a particular law will in fact do what it is potentially able to do depends on several factors. It is, however, true that in modern industrial societies there is an ingrained habit of obedience to law created and reinforced over the centuries of human interaction and

[1] *An American Dilemma*. Vol. I, p. 392.
[2] *Gauging Public Opinion*. Princeton, N.J., Princeton University Press, 1944, p. 228.

political organization. This does not mean that everyone obeys all laws uniformly, but merely that there is usually a strong disposition to obey laws, which will operate in the absence of very strong counter-drives. This general disposition can be relied on with most assurance where the law refrains from touching intimate, personal matters and from requiring an individual to change his attitude in order to conform to the law. The administration of anti-discrimination laws in the United States can, and has been made to, operate in accordance with this generalization.

The technical conditions affecting the enforceability of a law, irrespective of the public attitude toward it, are the feasibility of detection, apprehension and conviction of violators. If administration is sincere and reasonably efficient, it can enforce a law that is new or towards which there is considerable scepticism and hostility. The experience of communities with local fair employment practice laws confirms this observation. On the whole, anti-discrimination laws are analogous to fair trade laws and to laws aimed at unfair labour practices in general, which have been successfully enforced, rather than to the Eighteenth Amendment, the unsuccessful attempt to restrict the manufacture and sale of alcoholic beverages.

Another factor bearing upon the enforceability of a law is the level at which it is to be administered. If the enforcers are too close to the violators in residence and in daily life, administration tends to be personal rather than strictly objective. But if the administrative machinery is sufficiently removed from both the violators of the law and the persons who are their victims, a law can be more thoroughly and systematically enforced. Thus, many observers have pointed out that the federal police officials and the courts, which are relatively detached from the local scene, constitute more reliable protectors of equal opportunity than their counterparts on the local level. With respect to employment discrimination, at least, it seems to be the case that the farther removed the administrators of the law are the more fair and effective they are likely to be.

Special problems arise in enforcement, depending upon the various kinds of power held by the social group that is the target of the law and the social group that is intended to be its beneficiary. Laws against murder or theft, for example, are relatively easy to enforce; the murderers and thieves do not constitute a cohesive or powerful social group. At the same time the community as a whole, for whose benefit such laws exist and which is ranged against murderers and thieves, is in a position to be highly effective against the few and divided criminals. Another example is offered by the laws the United States passed in the 1930's to encourage trade unions to organize workers in the most

powerful industries. Here the target was a cohesive and economically powerful group of employers, but the beneficiary had other kinds of power, that of numbers and that of being an important element in a successful political coalition. Hence the law was effective. In the case of discrimination laws the target is not all employers, who would indeed constitute an enormously cohesive and powerful group but, since other forces operate to induce many employers to end discriminatory patterns, only some of them. The beneficiaries of the law, although economically weak, are—with respect to equality of opportunity—a highly unified and therefore powerful voting bloc. Indeed, we have seen how significantly Negro voting power, for example, affects Negro rights, and how rapidly this power has been growing in northern cities.

These are some of the broad conclusions to which this study points and which may be applicable elsewhere in varying ways and in different degrees. Law has indeed been one of the important historic means by which the people of the United States have moved toward the greater realization of the ideals of democracy and peaceful progress. This growing application of legal techniques has far-reaching significance for human and social relations of every kind. Thus, in a field outside of technology, a field touching the relationship of person to person and group to group, the United States is pointing out a way to planned, disciplined progress.

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